Denied
Motion to dismiss
1-31
Field.

Submitted
Jan. 28. 1875

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~442.~~ 159

THE CEDAR RAPIDS AND MISSOURI RIVER RAILROAD COMPANY, AND THE IOWA RAILROAD LAND COMPANY, PLAINTIFFS IN ERROR,

vs.

MILTON COURTRIGHT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED JUNE 27, 1873.

Oct. 2. 1874

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Appellant's abstract of record.

In the supreme court of Iowa, April term, 1872.

MILTON COURTRIGHT, APPELLEE,
vs.
THE CEDAR RAPIDS AND MISSOURI RIVER R. R. Co., et al., appellants.

Appeal from the judgment of the Linn district court.

Isaac Cook & N. M. Hubbard, attorneys for appellants; Platt Smith, attorney for appellee.

1 ABSTRACT OF RECORD.

On January 31st, 1870, plaintiff filed in the Linn district court a petition stating his cause of action, as follows:

Plaintiff complains of the defendants, who are each a corporation, existing under the laws of Iowa, and having its place of business at Cedar Rapids, in said State, for that plaintiff is the absolute owner in fee-simple and he is entitled to the immediate possession of the following-described real property, to wit:

Part of section.	S.	T'p.	R.	County.
N. ½ of N. E. ¼	5	87	42	Woodbury.
N. E. ¼ of N. W. ¼	5	87	42	do.
S. W. ¼ of N. W. ¼	5	86	42	do.
All	1	86	42	do.
All	29	87	42	do.
All	15	86	42	do.
N. W. ¼ of N. E. ¼	23	86	42	do.
W. ½ of S. W. ¼	23	86	42	do.
W. ½ of N. W. ¼	23	86	42	do.
N. E. ¼ of N. W. ¼	23	86	42	do.
N. W. ¼ of N. E. ¼	27	86	42	do.
All	7	87	42	do.
All	9	83	42	Monona.
N. W. ¼	5	83	42	do.
S. E. ¼	5	83	42	do.
W. ½	1	84	42	do.
N. ½ of N. W. ¼	1	84	43	do.
N. E. ¼	1	84	43	do.
S. W. ¼	1	84	43	do.
N. ½ of S. E. ¼	1	84	43	do.
S. W. ¼ of S. E. ¼	1	84	43	do.
E. ½	21	84	43	do.
All	29	84	43	do.
E. ½ of S. E. ¼	25	85	43	do.
S. E. ¼ of N. W. ¼	19	83	42	do.
E. ½ of S. E. ¼	19	83	42	do.
All	3	84	42	do.
All	23	84	42	do.
W. ½	15	44	42	do.
All	27	84	42	do.
All	35	85	42	do.
All	19	85	42	do.
S. ½ of N. W. ¼	19	84	43	do.
S. ½	19	84	43	do.

All situate west of the 5th p. m., in said State, according to the United States surveys, and that said defendants claim title to the same, and thereby unlawfully keep plaintiff out of the possession, use, and enjoyment thereof.

2 Wherefore plaintiff demands judgment against said defendants for the immediate possession of said property, and for costs.

And January 22d, 1872, defendants filed an amended and substituted answer, setting up the following defenses:

1st. The defendants admit that each of them is a corporation organized and existing under the laws of the State of Iowa, with its principal office and place of business at Cedar Rapids, in Linn County, in said State.

2d. These defendants deny that the said plaintiff is the owner in fee-simple, or that he has any title whatever to the lands mentioned and described in the said petition, or to any part of the said lands, and say that the defendant, the Iowa Railroad Land Company, is the owner in fee-simple absolute of the lands mentioned in the said petition, and of each and every parcel thereof by virtue of conveyances thereof from the said defendant, the Cedar Rapids and Missouri River Railroad, made about the 15th day of September, 1869, to the said Iowa Railroad Land Company, and that at and before the time the said conveyances were made the said Cedar Rapids & Missouri River Railroad was the owner thereof in fee-simple absolute.

3d. These defendants deny that the plaintiff is entitled to the possession of the said lands in the petition described or to any part thereof.

4th. And these defendants deny each and every allegation in the said petition contained not herein admitted.

Wherefore they ask to be hence dismissed with their costs.

And on January 23d, 1872, in pursuance of an order in the case entered at the November term, 1871, said cause was tried by the Hon. James H. Rotherock, judge of said court, sitting at chambers, and on the trial the following proceedings were had:

The following facts were admitted and agreed upon by the parties:

That either of the parties may read in evidence any and all
3 acts of Congress and of the general assembly of the State of Iowa, as evidence without objection. That the Iowa Central Air-Line Railroad Company was a corporation duly organized and existing under the laws of Iowa in 1856, and from thence to the present time. That the said Iowa Central Air-Line Railroad Company immediately after the passage of the act of the general assembly of the State of Iowa, approved July 14th, 1859, entitled an "Act to accept the grant and carry into execution the trust conferred upon the State of Iowa, by an act of Congress entitled an act making a grant of lands to the State of Iowa in alternate sections, to aid in the construction of railroads in said State," and within twenty days after the passage of said act filed in the office of sec'y of state, of Iowa, its written acceptance of the provisions of said act, and immediately thereafter made a survey and location of said line of railroad, and caused a map thereof to be made and filed as required by the said act of Congress; and that the said line was so surveyed, and staked out, and definitely located, as shown by said map, from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-Line Railroad near Maquoketa, thence on said main line, running as near as practicable to the forty-second parallel, across the said State to the Missouri River, in the month of March, 1857, by means of which survey and marking and staking of the line as aforesaid the vacant lands designated by odd numbers and lying within six miles of the line of said road were ascertained and fixed as belonging to the said grant, and the title thereof from the date of such survey become and was vested in the State of Iowa, for the purpose mentioned in said act of Congress; and that after said definite location was made, it appearing that the United

States had, prior to the making of said grant, sold and disposed of a large amount of lands within the limits of said grant, on the easterly portion of the line of said road, the governor of the State of Iowa appointed Bernhart Henn an agent to select, for and on behalf of the State, other lands in lieu of those previously disposed of and lying between the six and fifteen mile limits mentioned in said grant; and the said Bernhart Henn, in pursuance of said appointment and under authority of said act of Congress, selected all the vacant and unappropriated lands in sections designated by odd numbers on both sides of said line between the six and fifteen mile limits, which, together with those inside the six-mile limits, were insufficient to make a full and complete grant of six sections to the mile, as contemplated by said act of Congress, and the Secretary of the Interior approved such selections of land in the year 1857, and afterwards certified the same to the State of Iowa.

That under date of March 18th, 1858, the said corporation duly executed, delivered, and caused to be recorded its mortgage-deed to J. Edgar Thompson, Gilead A. Smith, and Norman W. Isbell, a copy of which is hereto attached, marked Exhibit "A," and made a part hereof; and under date last-named said corporation duly executed, delivered, and caused to be recorded a trust deed to W'm H. Gibbs, a copy of which is hereto attached, marked Exhibit "B," and made a part hereof; that said Gibbs afterward resigned said trust, and prior to November 28th, A. D. 1859, Joseph P. Eaton was appointed in his stead, and accepted said trust and entered upon the discharge of the duties thereof.

That on the 28th day of November, 1859, plaintiff received from the said Iowa Central Air-Line Railroad Company the four several deeds, copies of which are hereto attached, marked Exhibits C, D, E, and F respectively, and made a part hereof, containing the very lands named in the petition in this case; that all the lands named in said deeds are a part of the first and only one hundred and twenty sections ever sold or conveyed by said company, and that said one hundred and twenty sections were located within a continuous twenty miles of the line of said road, as so definitely staked out and located as aforesaid, and that said company never did sell or convey any other or greater quantity than one hundred and twenty sections of said land-grant.

That the said company failed to complete any part of its road, and the general assembly of Iowa passed an act, approved March 17th, 1860, entitled "An act to resume all rights conferred upon the Iowa Central Air-Line Railroad Company, by an act appreved July 14th, 1856, and to repeal certain laws in relation thereto," and passed another act approved March 26th, 1860, entitled "An act to carry into execution the trust conferred upon the State of Iowa in respect to the lands granted by an act of Congress, approved May 15th, 1856, to aid in the construction of said railroad."

That when the act of Congress in relation to said land-grant, approved June 2d, 1864, and found on pages 95 to 99 of the 13th volume of the Statutes at Large, became a law, the Cedar Rapids and Missouri River Railroad Company had completed about one hundred miles of its road, (the whole length from Cedar Rapids to the Missouri River being two hundred and seventy-one and six-tenths miles) and did not complete the same to the Missouri River until the fifth of February, 1867.

The ownership of the lands described in plaintiff's petition is claimed by both plaintiff and the Iowa Railroad Land Company, a grantee of said Cedar Rapids and Missouri River Railroad Company.

That said Railroad Land Company is a corporation organized for the

purpose of controlling and selling the lands of said Cedar Rapids and Missouri River Railroad Company, and claims to own said lands, and its right is as good as the right of its said grantor thereto, and no better.

That the bonds mentioned in said deeds to plaintiff are part of the 200 authorized by said mortgage to be paid for work already done.

That the scrip mentioned in said deeds to plaintiff were authorized by said deed of trust, and that the conversion thereof into said lands, as recited in said deeds, was done in compliance with, and in all respects conformable to said trust deed.

That in 1857 and 1858, a considerable amount of grading was done by the Iowa Central Air-Line Railroad Company between Lyons and Anamosa, the principal part being between Lyons and Maquoketa.

That the lands in controversy were certified to the State of Iowa by the Secretary of the Interior December 27, 1858.

That the first three sections of twenty miles each were certified by the governor of Iowa on the 31st day of October, 1864; two more sections on March 24th, 1866; and the remainder of the line to the Missouri River in June, 1867.

That the Iowa Central Air-Line Railroad Company, in selecting the one hundred and twenty sections in dispute, passed west of where
6 the lands could have been selected, and that a sufficient amount could have been selected east of range No. 33 west.

EXHIBIT A.

This indenture of mortgage, made this 18th day of March, 1858, between the Iowa Central Air-Line Railroad Company, a corporation organized under and in conformity to the acts of the general assembly of the State of Iowa, of the first part, and J. Edgar Thomson, of Philadelphia, Gilead A. Smith, of New York, and Norman W. Isbel, of the State of Iowa, parties of the second part, they being trustees, for the uses and purposes, and upon the terms and conditions hereinafter set forth, witnesseth:

Whereas the party of the first part, for the purpose of raising funds, from time to time to be expended in the construction and completion of the Iowa Central Air-Line Railroad and branch to Lyons, proposes to execute and deliver its construction bonds or obligations, in pursuance of law, and to become indebted to various persons, bodies politic or corporate, who shall become holders of the said construction bonds or obligations, in the sum of four millions dollars, lawful money of the United States, secured to be paid by four thousand construction bonds or obligations of said company, of and for the sum of one thousand dollars each, every one of which bonds shall provide for the payment unto the said persons, associations, bodies politic or corporate, who may become the holders thereof, the sum of one thousand dollars, on the first day of January, one thousand eight hundred and eighty-eight, and also the interest on the same, at the rate of seven per centum per annum, payable on the first days of January and July ensuing the date of said bonds, until the principal sums named therein respectively shall be paid and satisfied, according to the tenor thereof: Provided, that the amount of two or more bonds, at the discretion of the party of the first part, may be combined or consolidated into one, showing upon its face the numbers of the bonds so combined or consolidated.

Now, therefore, this indenture witnesseth that the said party of the first part, for the better securing of the payment of the sums of money mentioned in the said construction bonds or obligations,

so to be issued, and the interest thereon, and also for and in consideration of the sum of one dollar in hand paid to them by the parties of the second part, the receipt whereof is hereby acknowledged,
7 hath granted, bargained, sold, conveyed and confirmed, and by these presents doth grant, bargain, sell, and convey unto the said parties of the second part, and to their successors who may be appointed or elected in the manner and according to the conditions hereinafter set forth, all and singular, the Iowa Central Air-Line Railroad, its franchises, station-grounds, buildings, rolling-stock and equipments, in the State of Iowa, including the main line and the branch to Lyons, now owned by it, or hereafter to be owned or acquired, and all the franchises, rights, and privileges belonging to said Iowa Central Air-Line Railroad Company, or in any way pertaining or appurtenant to said railroad, now existing or hereafter to be acquired; also, all right, title, interest, claim or demand which said party of the first part now has or hereafter shall acquire in or to all public lands of the United States granted by act of Congress approved 15th May, 1856, to the State of Iowa, and by the general assembly of the State of Iowa, by act approved July 14th, 1856, granted to the said Iowa Central Air-Line Railroad Company, the party of the first part, hereinafter described or referred to, viz, all the lands granted by virtue of the acts aforesaid to said company, lying and being in all of the sections included in said grant which bear number as follows, to wit, 1, 5, 9, 13, 17, 21, 25, 29, and 33, with all the estate, right, title and interest, property, possession, claim or demand whatever, at law or in equity, of the said party of the first part in and to the same, and each and every part and parcel thereof: To have and to hold, all and singular, the said railroad, land, rolling-stock, and personal property, and premises hereby granted or intended so to be, and each and every part and parcel thereof, with the appurtenances thereunto belonging, unto the said parties of the second part, the survivor or survivors of them, and their successors appointed or elected, in manner hereinafter provided, for the uses and purposes, and upon the trusts, terms, and conditions in this indenture set forth and declared, subject, however, to the terms and conditions of the said acts of Congress and of the general assembly of the State of Iowa: Provided that so much of the lands aforesaid as shall exceed in quantity 412,500 acres, of an average quality and value, may be withdrawn from the lien created by this mortgage in the manner following, that is to say, by the party of the first part selecting and desig-
8 nating the said lands withdrawn in writing, and the lodging a copy thereof with one of the trustees or in the principal office of the trustees in Iowa.

Provided always, and these presents are upon the express condition, that if the said parties of the first part shall well and truly pay or cause to be paid to the holders of the said construction bonds or obligations, and every of them, the principal sums of money therein mentioned, according to the true intent and meaning thereof, with the interest thereon, at the times and in the manner as herein before provided, according to the true intent and meaning of these presents, that then and from thenceforth this indenture and the estate hereby granted shall cease and determine, and all the right, title, and int'rest in any and all property hereby conveyed to the parties of the second part, not then disposed of by them under the powers hereby conferred upon them, shall revert to and vest in the party of the first part.

This indenture further witnesseth, that these presents and the said construction bonds or obligations are made, executed, and delivered

upon trusts, terms, conditions, and agreements following, that is to say:

First. That the actual possession, management, use, and control of said railroad and branch, with the appurtenances to them belonging, shall be and remain with the party of the first part, without molestation or interference of the parties of the second part, except as is herein specially provided, so long as the said construction bonds or obligations shall remain without default or forfeiture and said party of the first part shall perform and keep the stipulations and conditions hereof.

Second. It is agreed that all the construction-bonds which shall be executed and issued by the party of the first part, under the provisions of this indenture, shall be delivered to the parties of the second part, from time to time to be countersigned by them as trustees under this instrument. Said parties of the second part are to hold said bonds, subject to be disposed of as follows:

1st. Such a number of said bonds are to be delivered over to the party of the first part as they, the party of the first part, in their judgment shall require, not exceeding two hundred, to pay outstanding liabilities incurred in and about the construction of that portion of the work already done.

9 2d. Such a number of bonds are to be delivered over to the party of the first part (not exceeding three hundred) as the company may from time to time require to pay incidental expenses, in making examinations of the lands of the company, in platting, classifying, and valuing the same, and the general expenses of the land department, interest accounts, and general expenses incident to the construction of the railroad, other than the grading and furnishing of materials for the construction of that portion west of Marion.

3d. Such a portion of the remaining thirty-five hundred bonds as are necessary to the carrying out the following specific trust shall be held by the party of the second part, subject to be sold, hypothecated, or used by the party of the first part, on the following conditions, viz: The avails of the sales and receipts from hypothecation, or other mode of use of such bonds, by the party of the first part, shall be paid over or transferred to said party of the second part to the extent required for the purposes following, and the party of the second part are, on receipt of such avails or transfers thereof, to deliver over such bonds so sold, hypothecated, or otherwise proposed to be used, to such person or party as the party of the first part shall direct, and said party of the second part are to see that the first avails thereof are used for the construction of so much of said railroad as lies between Lyons City and the town of Maquoketa, by the way of the town of Goodenow, substantially on the line as now located, and in furnishing materials therefor, and building station-houses, and to see that one-third of the first avails of the balance of said bonds is used in constructing the road from Sabula to a junction with the said road from Lyons, and in constructing so much of said railroad as lies between the towns of Maquoketa, in Jackson County, and Marion, in Linn County, by the way of Fremont, Wyoming, Isbel, and Anamosa, substantially on the line as now located, and in furnishing materials therefor, and in building station-houses at each of said towns, at such places at each of said towns, respectively, as shall be designated, on or before the first day of June next, by the board of directors of said company, until one-third of the said thirty-five hundred bonds or avails thereof, including the amount that may be expended in the construction of the road from Lyons to Maquoketa shall have been expended.

10 The party of the second part are to discharge this portion of

their trust, viz: the application of means to the building of that portion of the railroad from Lyons to Maquoketa, and building of station-houses on the same, by paying the first avails of said bonds over to the party of the first part, on monthly estimates, duly certified by the engineer of the company, for work done and materials furnished on said line, and the application of means to the building of that portion of the railroad from Sabula to a junction with the road from Lyons to Maquoketa, and from Maquoketa to Marion, and building station-houses on the same, by paying one-third of the first avail of the balance of said bonds over to the party of the first part, on monthly estimates, duly certified by the engineer of the company, for work done and materials furnished on said line, until one-third of the said thirty-five hundred bonds, or avails thereof, including the amount that may be expended in the construction of the road from Lyons to Maquoketa, shall have been expended: Provided that the said trustees shall not be required to retain in their hands a larger amount of the avails of said bonds than is necessary to carry out this special trust, and the remaining two-thirds of such avails are to be delivered to the party of the first part.

That any portion of said railroad shall be considered constructed, so far as this special trust is concerned, when the same shall be open for transportation, and station-houses constructed thereon, as aforesaid, and whenever the railroad from Lyons to Maquoketa, from Sabula to a junction with the railroad from Lyons, and from Maquoketa to Marion, is constructed, and station-houses built thereon, as aforesaid, or as soon as the one-third of said thirty-five hundred bonds shall have been expended, in pursuance of said special trust, in manner aforesaid, all the provisions of this indenture creating said special trust shall cease.

It is hereby provided that the district court, as a court of chancery, in either the counties in Iowa, from Linn, inclusive, through which said road passes to the Mississippi River, shall have supervision over so much of this trust as relates to the faithful appropriation of one-third of said thirty-five hundred bonds, in the manner aforesaid, to that portion of the road from Lyons and Sabula to Marion, and may, at the instance of any stockholder now residing in any of said counties
11 who shall not have ceased to be such, proceed, according to the usages of courts of equity, to enforce the faithful execution of this portion of said trust, or any other trust which may be substituted in lieu hereof.

And in the consideration of the sum of five dollars, hereby acknowledged to be paid by each of the stockholders residing in said counties respectively, to said company, so much of this trust as relates to the appropriations for constructing said road and building station-houses on the line east of Marion is declared irrevocable.

But it is provided and agreed that, with the consent of the bondholders, a different financial plan may be substituted for the one embraced in this deed of trust, and a different deed of trust made in lieu of this, upon the condition that the same provisions are incorporated in said deed of trust that are herein contained in respect to the application of the first avails of the bonds of the company to the construction of the railroad from Lyons to Maquoketa, and station-houses thereon, and one-third of the first avails of said bonds, including the amount that may be expended between Lyons and Maquoketa, in the construction of the railroad from Sabula to a junction with the road from Lyons, and the railroad from Maquoketa to Marion, and station-houses, in manner aforesaid.

Provided, further, in case any bonds are hypothecated and afterwards redeemed by the company, such bonds so redeemed shall be deposited again with the party of the second part, to be held in the same manner as is provided for on their first execution.

After the application of the one-third of the avails of said thirty-five hundred bonds in construction of the railroad from Sabula and Lyons to Marion, and erecting of station-houses thereon, as above stated, then the said party of the second part are to deliver over to the party of the first part the bonds that shall then remain undisposed of from time to time, duly countersigned, as requested by the party of the first part.

It is also agreed by and between the parties hereto that the said four hundred and twelve thousand and five hundred acres of land included in this mortgage shall be under the management and control of the parties of the second part, who shall have full power and authority
12 to sell and dispose of the same at such price, on such credit or terms of payment, and such other conditions as to them shall seem most judicious for the interest of all parties, and especially to secure the payment in full of all the construction-bonds issued, as hereinbefore provided; subject, however, to the conditions and limitations hereinafter set forth.

For this purpose the said lands shall be carefully examined, surveyed, classified, and valued, and proper maps shall be prepared for exhibiting the position thereof by the party of the first part, a copy of which shall be furnished to the parties of the second part.

If upon receiving such reports neither the board of directors, nor the parties of the second part, make objection to the valuations therein stated, none of the lands therein specified and valued shall within twelve months next thereafter be sold at less than the prices at which they are respectively valued in such reports. But if either party shall object to such valuation, either as a whole, or to that of any particular tract or section, then such valuation so objected to shall be revised, and after such revision the valuation shall be the minimum price for the term of twelve months from the time of the presentation of the first report thereof. At the expiration of each twelve months a review shall be had in like manner, fixing the valuation for the next twelve months ensuing.

The said parties of the second part shall have full authority to sell any portion of said lands for cash, or upon contracts, payable in instalments, upon such rates of interest as they may deem most judicious. They may make conditions with the purchaser for partial cultivation by him of the track sold, for the purpose of inducing early settlement of such lands and consequent increase of the traffic of the road. The purchaser of any of the said lands shall be at liberty to pay for any lands purchased by him in the construction-bonds to be issued under the provisions of this instrument at par, if the amount of the purchase is such that one or more bonds would be absorbed thereby, excepting where payments are to be made under contracts which provide for payment in cash.

When any tract or parcel of said lands shall have been purchased and paid for, either in bonds or cash, or the purchase-money therefor
13 shall be secured by mortgage thereon, the same shall be conveyed by said parties of the second part to the purchaser, in fee-simple, and shall by such conveyance be absolutely and forever released from any and all lien or encumbrance for or on account of said construction-bonds, or this indenture, or any other debt or obligation of the said party of the first part.

In any case in which any parcel or tract of the said lands shall be

crossed by the roadway of said road or branches, or shall be so situated as to be desirable for use by said company as depot-ground, the said tract, or such portion thereof as may be sufficient for the present or future necessities of the business of said company, may be withdrawn from exposure to sale, and withheld by the parties of the second part from sale, and retained under this mortgage, as a portion of the roadway or depot-grounds of said company.

The parties of the second part shall and will set forth and declare in each deed of conveyance the true amount of the purchase-money of the land therein conveyed, and the part thereof for which a bond or bonds may have been received, with the number and amount thereof, the amount of purchase-money secured by mortgage, and also the sum paid in cash for any remainder of the purchase-money.

The parties of the second part shall and will discharge and cancel each and every construction-bond or obligation which they may receive in payment for land by defacing the seal of the corporation on receipt thereof, and will make, or cause to be made, on the face thereof a note or memorandum, with proper description of the land sold or conveyed, with the date of the conveyance for which the same has been received and cancelled, in such a manner as will enable the party of the first part to trace the appropriation of such construction-bonds, and, on making their first report thereafter to the company, surrender up said cancelled bonds and take the secretary's receipt therefor.

It is understood and agreed by and between the parties hereunto that the parties of the second part are to appoint a bond land-commissioner, to take charge of the lands mortgaged and various agents and clerks in the department under their supervision and control, with the power of removal and re-appointment, to establish a principal office in the State of Iowa and such branch-offices in addition as necessary, all of
14 which is to be subject to the approval of the board of directors, including the salary of officers and agents, and the party of the first part are to pay all the expenses incident to the land-trust.

It is also agreed that the said parties of the second part shall, if required by the party of the first part, devote any interest which they may receive on contracts for sale of any portion of said land, first, to meet the expenses incident to the execution of their trust regarding said lands, and the balance, if any there be, to the payment of the general expenses of the said railroad company.

To prevent any deficiency in the payment of interest on the mortgage-bonds of the company, it is provided that twenty-five per cent. of the gross receipts from the sale of lands mortgaged may be applied, first, to the payment of such interest and to expense of the land-trust.

All the residue and remainder of the avails of the said lands shall from time to time, as the same shall be received by the parties of the second part, be devoted and used by them solely to the redemption and payment of all the construction-bonds issued under and in conformity with the terms of this indenture.

And for this purpose all such avails of sales shall, from time to time, as the same are realized, be used in the purchase of such bonds in the market, to be cancelled, so long as such bonds can be so purchased at a rate not exceeding the par value thereof, added to any interest that may accrue thereon; and whenever such bonds cannot be purchased at that rate said parties of the second part shall, on or before the day on which any semi-annual interest becomes due on such bonds, advertise in one newspaper printed in Iowa, and one in each of the cities of Chicago, New York, and London, at least three weeks successively, giving notice

of their readiness to redeem a certain amount of said bonds at par, adding any interest that may have accrued thereon, specifying the amounts and numbers of the bonds they propose to redeem, the same having been previously designated by lot, and that they will redeem the same at the expiration of one year from the day on which interest thereon falls due, on or before which such notice may be published as aforesaid; and after the time limited in such advertisement interest shall cease to accrue on the bonds thus specified, and the parties of the second
15 part shall, from any funds in their hands appropriated thereto, redeem the same whenever presented, at their par value, but without further interest.

It is further agreed that all the bonds thus purchased in market, redeemed, received in payment for lands, or otherwise paid and taken up by said parties of the second part, shall, so far as they are thus purchased, redeemed, or taken up, be cancelled by said parties of the second part, so far as the principal thereof is concerned, but that the coupons or interest-warrants attached thereto shall be retained by said parties of the second part, and shall, as they shall severally mature and become payable, be collected by said parties of the second part from the said parties of the first part, for the purpose of forming a sinking-fund for the ultimate redemption of all the remainder of said outstanding bonds, and the avails of all such coupons taken from cancelled bonds as they are, from time to time, received by said parties of the second part, shall be invested by them on interest in said construction-bonds, and the accumulating interest thereon added thereto, until the proceeds, which may be received for the sales of lands and the said sinking-fund, with its prospective accumulations, together with the amount due from land sales and interest thereon, shall be sufficient to pay up and redeem at their maturity all the remainder of such construction-bonds then outstanding, after which, as the bonds are cancelled, the coupons belonging to the same shall also be cancelled and surrendered up to the company as provided in case of cancelled bonds.

This indenture further witnesseth that the said parties of the second part shall cause all the lands to which they may become entitled by virtue of this instrument to be entered upon proper books, in their land department, at as early a day as practicable after the same are classified and valued, and shall also cause all proper entries in the books regarding the same to be properly made, and that the accounts from said land department, showing the transactions therein, shall be furnished to the party of the first part as often as once in three months if required by said party of the first part.

The said parties of the second part will also keep, or cause to be kept, a correct account of all construction-bonds delivered to them of
16 those to which they attach their signatures and render an account thereof to said party of the first part once in three months, and will furnish a general report of their proceedings in this behalf annually to be presented to the annual meeting of the stockholders of said company.

It is further mutually agreed that the parties hereto will furnish, each to the other, full and true accounts-current of their transactions connected with the construction, equipment, and operation of said road, the disposition of said bonds and lands, and the avails thereof, once in six months, commencing on the 1st day of July next ensuing the date hereof.

This indenture further witnesseth that the said party of the first part doth hereby covenant and agree to pay to the holders of said con-

struction-bonds, at their maturity respectively, the said principal sums of money therein mentioned, and also the interest thereon, as the same shall semi-annually accrue and become payable, according to the tenor of said bonds. If any default shall be made in the payment of the principal of any of said bonds when they become due, or if any default shall be made in the payment of the interest on any of said bonds for twelve months after demand at the place of payment after the same becomes due, then the said parties of the second part, or their successors, may, or, on being requested and fully indemnified by the holders of not less than five hundred thousand dollars of said bonds, shall enter into and take possession of said railroad and branch, and of its appurtenances, and the franchise of the party of the first part, and of the property contained in this mortgage and conveyed by this indenture, or intended so to be; and in case said parties of the second part or their successors shall take possession of the said railroad as is herein mortgaged, they shall have full power to operate the same in such manner as in their judgment will best secure the interest of all parties. If said default in the payment of interest shall continue for twelve months from the time of such demand and refusal, the principal sum of all said bonds shall become due and payable. In case of such default in payment of the principal or interest for twelve months, the said parties of the second part or their successors shall then, on being indemnified therefor, at the request in writing of twenty-five per cent. in amount of the bonds then outstanding, enter upon, take possession, and sell said road
17 and property, or so much thereof as shall be necessary to pay all said bonds then outstanding, with the accrued interest thereon, at public sale, provided that at least three months' previous notice of the time and place of such sale shall have been given in at least one newspaper in the State of Iowa, one in Chicago, one in the city of New York, and one in London, England. In case of such sale it shall be the duty of said parties of the second part to make, execute, and deliver a proper conueyance of so much of said road and its franchises, and any other property, as is hereby mortgaged and so sold, which shall convey to the purchaser or purchasers all the rights and previleges of the said party of the first part, in and to the property, and the franchises thus sold and conveyed to the same extent as the same shall have previously been enjoyed and held by said company. The said parties of the second part shall, after paying expenses of such sale, and any expenses incident to the execution of said trust then unpaid, apply the proceeds of such sale to the payment of all said construction-bonds then outstanding, with the accrued interest thereon, and the remainder of the proceeds of such sale, if any, shall be paid to the said party of the first part.

And in case the avails of such sale of all the property held by the parties of the second part under this indenture shall, after deducting the expenses of such sale and the other expenses incident to the execution of said trust then unpaid, be insufficient to pay in full all the said construction-bonds then outstanding, with the interest thereon, then said avails of such sale, after deducting the expenses aforesaid, shall be, by the said party of the second part, divided and paid to the holders of said bonds, in proportion to the amounts held by them respectively.

In case of vacancy in the number of the parties of the second part, by death, resignation of their trust, removal, inability, or refusal to accept or serve in the execution of said trust, the remaining one or more of the parties of the second part shall, during the existence of such vacancy, have all the rights, exercise all the powers, and discharge all the duties devolving on all the parties of the second part by this instru-

ment. But, as soon as it conveniently may be done, such vacancy, if but one, shall be filled by an appointment by the remaining parties
18 of the second part, of some person to act with them in the discharge of their duties. And in case a second vacancy shall occur before the first is thus filled, such vacancies shall be filled by the appointment by the remaining party of the second part of some person to act in one of the vacancies, and the other vacancy may be filled by the appointment of the board of directors of said company of another person to act in that vacancy. And in case three or all such vacancies shall exist at one time, a joint meeting of holders of said construction-bonds and of the stockholders of said company shall be called by the party of the first part, at its office, in the State of Iowa, by not less than sixty days' notice in two newspapers in the city of New York and two in the State of Iowa, and the persons who shall receive the votes of the majority in amount of interest of those represented by proxies or personally present and voting, regarding both bonds and stock at their par value, shall be elected as trustees to fill the said vacancies in the number of the parties of the second part in discharging the trust, powers, and duties herein expressed—no person being eligible whose name shall not have been posted conspicuously as a candidate for such appointment in the office of the parties of the second part and in the office of the company aforesaid at least three days before said meeting. If, however, after twenty ballots, no election shall have been made by a majority in amount of those present and voting, then any person holding not less than fifty shares of said stock or five thousand dollars of such construction-bonds shall be eligible in any subsequent ballot, whether his name has been so posted as a candidate or not; and the person or persons appointed trustee or trustees in either of the forms above specified, shall, from and after his appointment, become vested with the same powers, rights, and interests, charged with the same duties and responsibilities as if he or they had been the original party or parties of the second part named in and executing this indenture.

In case any subsequent vacancy shall occur in the number of trustees, the same shall be filled in the same manner as hereinbefore provided.

Either or all of the trustees may resign their office at pleasure by
19 filing their resignation with the secretary of the company; but if all resign, such resignation shall not go into effect till the board of directors can appoint a committee of two persons to act with the bond-land commissioner during such vacancy by resignation as hereinafter provided.

It is further agreed that in case, at any time, there shall be a vacancy in the office of all the parties of the second part, or their successors, as such trustees, the care and charge of the business of their office as such trustees, and all moneys, papers, and documents connected with said trust, shall, while such vacancy continues, devolve upon the bond-land commissioner, and a committee of two persons who shall be at once appointed by the board of directors of said company, and who shall jointly exercise all such care, charge, and authority over the affairs of said trust as may be necessary until such vacancy can be filled.

Provided further, that the bondholders (each mortgage-bond being entitled to one vote) may at any time remove one or more of the trustees and nominate other persons to fill their vacancy, by a majority of all the votes cast at a meeting called for that purpose, which nomination shall be subject to confirmation by the board of directors.

The time and place of meeting for the purpose of voting upon removal of any trustee, and the filling the vacancy occasioned thereby, shall be

called by the owners of at least one hundred thousand dollars of such bonds, fixing the time and place of such meeting in the city of New York, and giving not less than sixty days' notice in newspapers published, one in Iowa, one in Chicago, one in New York, and one in London, England.

It is further agreed by and between the parties hereto that whenever all the construction bonds which shall have been executed and issued by the party of the first part, under and in conformity to the provisions of this indenture, shall, with the interest thereon, have been fully paid, together with all the expenses incurred by the parties of the second part in the execution of the trust herein and hereby confided to them, the parties of the second part, and their successors, shall reconvey to the party of the first part all and singular the railroad, its premises and appurtenances, and all other property, real or personal, then in the
20 hands of said parties of the second part, portion of the property hereby conveyed, or the avails thereof, and not before that time by them sold or disposed of in the execution of the trust hereby created.

In case the said parties of the second part shall at any time have any trust-moneys on hand which will not be required to meet any immediate liability of said company to which said trust-fund is devoted, the said parties of the second part, or their successors, may deposit such trust-funds or interest with some safe bank, or trust-company in the city of New York, or may loan the same on call or short time, taking ample security in United States stocks, or the stocks of the States of New York, Ohio, or Massachusetts, or the obligations of the city of New York, or in such other securities as may from time to time be approved by the said parties of the second part, and sanctioned by the board of directors of said party of the first part.

It is further agreed by and between the parties hereto, that whenever, in the judgment of any two of said trustees, it shall be necessary for them to act in discharging any of the duties provided for herein, in the absence of the third trustee, such two trustees may exercise any power or discharge any duty devolving on the said parties of the second part with the like force and effect as if all the said trustees were present and acted therein.

It is further mutually agreed by and between the parties hereto, that the said parties of the second part, their heirs, executors, and administrators, shall not be answerable for the acts, omissions, or defaults of each other.

It is hereby expressly understood and agreed, that in no case shall any claim or advantage be taken by the party of the first part or its assigns, of any valuation or appraisement, or extension law or laws that may now or hereafter be in force, and the party of the first part hereby waive all benefits of such laws.

It is further understood and agreed that, if at any time the said party of the first part shall desire to sell or dispose of any portion of land which may have been procured for depot-grounds, or in connection with right of way, and which are not necessary to be retained for the uses of said road, or shall desire to sell any locomotives, cars, or other equipment belonging to said road which may not be necessary or convenient for use on the same, such sales may be made with the consent and
21 approbation of the parties of the second part, who may execute proper releases of their lien thereon under this deed; provided the avails of such sale shall be invested in other lands or other equipment for said road, which shall be approved by the said parties of the

second part; or, if needed for such purposes, shall be expended, subject to their approval, for purposes connected with the construction and completion of said railroad, or shall be paid over to the parties of the second part for the redemption of the construction-bonds secured by this mortgage.

In case at any time hereafter it shall be found advisable to lessen the amount of the bonds herein provided for, it shall be in the power of the party of the first part to do so from time to time as deemed advisable. To that end, such a quantity of land as shall be necessary to carry out that object shall be released, at the request of the party of the first part, by the trustees, from the effect of this mortgage, on a plan that shall insure substantially a release of lands of an average quality and value with the whole that is herein mortgaged. That is to say, one hundred and twenty acres of land, of an average quality and value of all that is hereby mortgaged shall be released from the effect of this mortgage for each bond that the party of the first part shall desire to withhold from being issued: Provided, that the lessening the amount of bonds shall not impair the fund for the construction of that portion of the road east of Marion as above provided. And it shall be the duty of the trustees at the same time to see that the relative proportion of the bonds herein provided for to be issued are estopped ever after from being issued under this mortgage.

The party of the first part further covenants with the parties of the second part and their successors in this trust, that the party of the first part is the lawful owner of the said lands so granted to the said Iowa Central Air-Line Railroad Company by and through the acts of the Congress of the United States, and of the State of Iowa, hereinbefore mentioned; and that it has full authority to convey the same, together with its railroad and appurtenances, and every part thereof, as herein described, to them the said parties of the second part, and their successors, as before mentioned; and that it shall and will, at any and all time and times, and from time to time, at the reasonable request of
22 the parties of the second part and their successors, make and execute all further assurances, conveyances, and instruments needful or proper to the said parties of the second part and their successors, for the more fully carrying into effect the purposes of this indenture. And the party of the first part doth further covenant and agree to and with the parties of the second part, and their successors in the trust, grantees and assigns, that it will forever warrant them, and each of them, in the quiet and peaceable possession of the said premises hereinbefore conveyed and mortgaged, against all and every person and persons lawfully claiming or to claim the same or any part thereof.

In witness whereof the said Iowa Central Air-Line Railroad Company, by and in pursuance of an order and resolution of its board of directors, made and adopted on the eighteenth day of March, in the year eighteen hundred and fifty-eight, authorizing the execution hereof, by its president and secretary, under its seal, in twenty-five original instruments of the same contents, tenor and date, each of which is to be regarded as an original deed, hath hereunto affixed its corporate seal, and hath caused the same to be attested by the signature of its president and secretary, as one of said original deeds, on the day and year first above written.

S. S. JONES,
President Iowa Central Air-Line Railroad Company.

[L. S.]

GEO. W. BETTESWORTH,
Secretary Iowa Central Air-Line Railroad Company.

STATE OF IOWA,
Jackson County, ss:

Be it remembered, that on the 18th day of February, A. D. 1858, personally appeared before me, the undersigned, a notary public, duly commissioned and qualified in and for said county, S. S. Jones, president, and George W. Bettesworth, secretary, of the Iowa Central Air Line Railroad Company, both of whom are personally known to me to be the identical persons whose names are affixed to the foregoing deed as president and secretary of said railroad company, as grantors, and severally acknowledged the foregoing instrument to be their voluntary act and deed.

23 In witness whereof I have hereunto subscribed my name and affixed my notarial seal, on the year above written.

JOSEPH P. EATON,
Notary Public.

Resolved, That the form of a deed of trust and mortgage from this company to J. Edgar Thomson, of Philadelphia, Gilead A. Smith, of New York, and Norman W. Isbel, of Iowa, now presented to this board, and among other things set forth, (all of which are hereby approved of,) mortgaging to the said parties the Iowa Central Air-Line Railroad, lands covered thereby or appurtenant thereto, railway stations and station-grounds, rolling-stock, locomotives, cars, buildings, and four hundred and twelve thousand and five hundred acres of land, (it being lands that were granted by the United States to the State of Iowa, and by act of the State of Iowa, approved July 14th, 1856, granted to this company,) as set forth in said instrument, and giving them powers to sell and dispose of the same for the security and payment of construction bonds to be issued by this company to the amount of four millions of dollars, and that the president and secretary be authorized to affix to twenty-five instruments or deeds of trust and mortgage, all of like contents, and of the same tenor and date, and to affix the corporate seal of this company thereto, and attest the same by their signatures as and for an execution thereof on the part of the company; and that the president and secretary be authorized to deliver said twenty-five instruments, deeds of trust or mortgage to the said J. Edgar Thomson, of Philadelphia, Gilead A. Smith, of New York, and Norman W. Isbel, as the deed of this company, and each one of which shall be regarded as the deed of this company, and may be recorded in any county of the State of Iowa with the same effect as if but one of the said instruments, deeds of trust or mortgage had been executed. And it is further

Resolved, That a copy of this resolution, certified under the corporate seal of this company by the secretary, be affixed to each of said instruments, deeds of trust, or mortgage. And the said president is further authorized to procure and execute said four thousand bonds in the usual and proper form, and generally to do and perform all other acts proper and necessary for the carrying out and completing the details of
24 said trust, mortgage-bonds, and other matters appertaining thereto. The coupons or interest-warrants to be signed by the secretary of this company.

OFFICE OF THE IOWA CENTRAL AIR-LINE RAILROAD COMPANY.

This is to certify that at a meeting of the board of directors of the Iowa Central Air-Line Railroad Company, held at the Tremont House, in

the city of Chicago, on the 18th day of March, 1858, the foregoing resolutions of the board were adopted, and now stand in full force upon the records of said company.

In witness whereof the secretary of this company has hereunto set his hand and caused the corporate seal of the company to be affixed, the day and year above-mentioned.

[L. S.] GEO. W. BETTESWORTH,
Secretary Iowa Central Air-Line Railroad Company.

EXHIBIT B.

This indenture of trust-deed, made this eighteenth day of March 1858, between the Iowa Central Air-Line Railroad Company, a corporation organized under and in conformity with the laws of the State of Iowa, of the first part, and William H. Gibbs, of Lyons, in the State of Iowa, of the second part, he being a trustee, for the use and purposes, and upon the terms and conditions hereinafter set forth:

Whereas, the party of the first part, for the purpose of raising funds from time to time to be expended in and about the business of the Iowa Central Air-Line Railroad Company, propose to sell and dispose of a portion of their capital stock to various persons, bodies-politic or corporate, who may desire to become purchasers thereof, and for the purpose of inducing various persons, bodies-politic or corporate, to become purchasers of such capital stock, and to pay for the same, and that ample justice to various persons, bodies-politic or corporate, who have already become subscribers to or purchasers of a portion of the capital stock of said railroad company, and to place such stock already subscribed to or sold, on an equality with that which shall hereafter be subscribed to or sold under the provisions of this trust:

25 Now, therefore, this indenture witnesseth that the said party of the first part, for the better securing the undertaking and agreement of the party of the first part to the various persons, bodies-corporate or politic who have already subscribed for, or purchased any portion of the capital stock of said railroad company, or who may hereafter subscribe to, or become purchasers of any portion of such capital stock from said party of the first part, in the manner and upon the terms hereinafter set forth, and in consideration of one dollar in hand paid to them by the party of the second part, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and conveyed unto the said party of the second part, and to his successors in such office of trustee, who may be appointed or elected in the manner and according to the conditions hereinafter set forth, all and singular the following described lands, viz, four hundred and twelve thousand and five hundred acres of land; it being all the land belonging to the Iowa Central Air-Line Railroad Company, by virtue of an act of Congress approved May 15th, 1856, and by an act of the general assembly of the State of Iowa, approved July 14th, 1856, (except the excess over the four hundred and twelve thousand and five hundred acres,) that is situated in sections, (and belonging to the party of the first part) numbered three, seven, eleven, fifteen, nineteen, twenty-three, twenty-seven, thirty-one, and thirty-five, in each township of the land belonging to the railroad company aforesaid, all of which sections are to be included in this trust-deed; but the excess that shall be found in said sections to belong to the party of the first part over and above the said four hundred and twelve thousand and five hundred acres is subject to become exempt from the effect of this trust-deed, at any time, by the mere selection of such excess,

(which shall be of an average value and quality of the whole,) and designating the same by the party of the first part in writing, and the lodging a copy thereof in the office of the stock-land commissioners of the party of the first part; whereupon it shall be the duty of the trustee to whom this deed of trust is made, or his successor in office, to release such excess from the effect of this trust-deed, and acknowledge the same in due form of law, so as to be made a matter of record.

Provided, however, that if any portion of said excess over and
26 above the said four hundred and twelve thousand and five hundred acres shall be laid out into town lots, at points where stations shall be required on the line of the Iowa Central Air-Line Railroad, then all such lots as shall be so laid out, and also all other town lots which the said Iowa Central Air-Line Railroad Company shall lay out on the line of their railroad where stations are required and located, become at once, on being so laid out, platted, and recorded, vested by virtue of this deed of trust in said trustee, or his successor or successors in such trust, for like uses and purposes as provided for in case of the four hundred and twelve thousand and five hundred acres of land, and as more fully set forth in this deed of trust.

To have and to hold all and singular the said four hundred and twelve thousand and five hundred acres of land, and all such town lots so to be laid out as herein provided, with the privileges and appurtenances thereunto belonging, unto the said party of the second part, and his successor or successors in this trust, upon the terms and conditions in this indenture set forth and declared.

Provided, always, and these presents are upon the express condition that if the said party of the first part shall well and truly keep and perform all and singular their agreements, promises, and undertakings to and with each and every person, party, parties, bodies-politic or corporate who are now, or who shall at any time hereafter become subscribers to, or purchasers or owners of any number of shares of the capital stock of the Iowa Central Air-Line Railroad Company, and every of them, according to the true intent and meaning of these presents, that then and from thenceforth and the estate hereby granted, and all the right, title, and interest in any and all property hereby conveyed to the party of the second part, not then disposed of, under the powers hereby conferred upon said party of the second part, and his successor or successors, shall revert to and vest in the party of the first part.

This indenture further witnesseth, that these presents are made, executed, and delivered upon the terms, conditions, and agreements following, that is to say:

The party of the first part does hereby set apart and conveys to said trustee said four hundred and twelve thousand and five hundred
27 acres of land, to be appropriated to and sold with thirty-three thousand shares of the capital stock of the said railroad company. And all the town lots that the party of the first part shall hereafter lay out (where stations are required and located on the line of the Iowa Central Air-Line Railroad) are to be appropriated to and disposed of as hereinafter set forth.

The party of the first part will classify and value the above farming lands at an average of eight dollars per acre, and will also issue land-scrip bearing eight per cent. int'rest, in sums of one hundred dollars each, to accompany each share of full-paid stock, which shall be issued to the owner of such stock, as hereinafter provided. The holder of such land-scrip may pay for any lands or town-lots belonging to the company, set off to this stock with the same, at the appraised

value. The said land-scrip may be entered on any lands or town-lots so set aside that this company may be entitled to, now or hereafter, under the act of Congress approved May 15th, A. D. 1856, and the act of the general assembly of the State of Iowa, approved July 14th, A. D. 1856, and shall enure to the benefit of the person, his heirs and assigns, who enter the same with such scrip.

In the month of January, A. D. 1859, and every January thereafter until all such lands are sold, the average value of all the lands and town-lots remaining unsold shall be raised to an equal amount with the interest that shall have accrued on the land-scrip; and in all cases the interest accruing on the land-scrip shall be payable in like manner with the principal of the scrip only.

Whenever the holder of any such land-scrip shall locate the same on any Government subdivision, it shall be the duty of the company, by a proper officer in their behalf, to convey the same by deed to the person, his heirs or assigns, entering the same.

Whenever twenty-five per cent. shall be paid on two or more shares of stock by one subscriber, such subscriber may have all future instalments, if paid within 60 days after the time fixed for the payment of the same, so applied as to make full-paid shares at the option of the subscriber, thereby the sooner entitling him to his land-scrip on such shares as he shall have fully paid; but in no case shall land-scrip be issued except to accompany full-paid stock, and all full-paid stock for which land-scrip is issued shall not thereafter be en-
28 titled to interest; such land-scrip to be issued under the hands of the secretary and stock-land commissioner, and seal of the company, and to be numbered from number one upward, and a record to be kept by the secretary showing what number of land-scrip accompanied the stock for which it was issued.

The said party of the second part shall, by virtue of his office of trustee, be a stock-land commissioner, and he and his successor or successors in such office of trustee shall, by virtue of his office of trustee, be the stock-land commissioner. Said trustee and his successors in office shall be subject to removal at the discretion of the board of directors. It shall be the duty of the stock-land commissioner of the company to classify, and map, and value (subject to the approval of the board of directors) all lands and town-lots included in this deed of trust, and to perform such duties appertaining to the land department as the company shall from time to time provide.

Such land commissioner shall, also, during the term of his office, be a trustee to hold in trust all the lands and town-lots which shall be set apart to accompany stock under the provisions of this deed of trust; and in case of his removal, resignation, inability, or refusal to act, then, until his successor is appointed, the secretary of the company shall perform the duties of such land commissioner, and hold such trust. And in case of death, resignation, or removal of both land commissioner and secretary, then, until a successor to one of such offices shall be appointed, such trust shall vest in such directors of the company as shall for the time being be in office, any one of whom may discharge the duties of such land commissioner and trustee for and during such vacancy.

In entering of any land with land-scrip, if the amount of land-scrip offered in payment amounts to a fraction over the appraised value of the land, the company shall not pay any money back, but the holder of the scrip may forfeit the excess or pay the fractional part of a single land-scrip in money at his option. When more than one tract

of land is taken at the same time, fractional parts of land-scrip may be used in payment therefor.

All full-paid stock heretofore taken, and all bonds and other obligations of the company issued and owing, together with the
29 interest that has accrued on the same, or shall hereafter accrue previous to such conversion, may be converted into full-paid stock; and when so converted each share, together with all full-paid stock heretofore taken, except that stock and bonds issued under a preamble and resolution of the board, adopted March 19th, 1857, which stock and bonds issued under said resolution shall only be converted at the rate of one dollar for sixty-six and two thirds cents of the full-paid stock with the land scrip attached, as herein provided for other stocks, shall be entitled to land-scrip as in case of other stocks; provided, such land-scrip shall contain a clause, as shall all stock land-scrip, which shall require such scrip to be entered upon lands embraced in sections 3, 7, 11, 15, 19, 23, 27, 31, 35, of any township embraced in the land-grant to this company, which sections shall be classified and appraised at an average of eight dollars per acre, or upon town-lots.

Provided that such bonds shall be converted on or before the first day of January, 1859, unless the railroad company shall hereafter deem it advisable to extend such time for conversion.

All lands belonging to the company in excess of the 825,000 acres hereinbefore appropriated may be selected out of all the lands belonging to the company, and set apart as exempt from entry with land-script, or as security for bonds as aforesaid, but subject to be disposed of by the company, first for town-sites, then the remainder for any purpose they may deem expedient; but until the company shall actually select and set apart specific lots from being subject to entry as aforesaid by land-scrip, no exception shall be taken to any entry being made by the holder of land-scrip on application.

Out of lands which shall be selected and reserved as exempt from location with land-scrip, and exempt from mortgage, the company shall reserve for town-sites at every point where stations shall be required on the line of the road, a quantity of land of at least 320 acres, (where the company shall be owners of the same,) and when not the owners of the land, they may in the discretion of the board of directors purchase for town-sites at points where stations are required, such a quantity of land as they shall deem for the best interest of the company, which lands when so selected or purchased for town-sites, where stations shall be
30 required, shall be laid out in lots, classified, appr'ised and made subject to entry with cash bonds of the company, land-scrip, or any other stated or duly audited or authenticated indebtedness of the company at its par value. Provided, when stock-land scrip is received by any stockholder he shall determine whether he will have it for the payment of town-lots or for farming-lands, and scrip shall show upon its face which it is intended for, and when the interest is cast on land-scrip in January of each year, the increased value that shall be placed on farming-lands or town-lots to meet the accrued interest on such scrip shall be so divided as to make the farming-lands bear the interest that accrues on the scrip issued to pay for such farming-lands, and the town-lots that which accrues on the scrip issued to pay for town-lots.

The classification and appraisal of such town-lots shall be subject to revision from time to time, in the discretion of the board, but shall always be subject to entry at the appraised value at the time of presentation of any of the before-named classes of indebtedness of the company or

money for that purpose, all of which shall be condu'ted in the same manner and by the same officers and agents as is provided for in case of stock-land scrip. And such towns may be located anywhere on the line of the road where stations shall be deemed necessary, as well where the company has no title as where they shall have acquired title before making locations, and proper title-papers shall be made in like manner as is provided for in case of stock-land scrip locations.

The first applicant for any tract or tracts of lands, or town lot or lots, on presentation, at the time of making application, of land-scrip or other means provided for payment to pay for the same, and the actual payment thereof shall entitle him or her to a certificate or certificates of entry for the same from the stock-land commissioner, which certificate of entry shall entitle the party entering the same to his proper title-deed in accordance with the provisions above specified.

On issuing such certificate of entry, it shall be the duty of the stock-land commissioner to report the same to the secretary of the said railroad company, whereupon it shall be his duty (without unnecessary delay) to execute a proper title-deed with covenants of warranty of
31 title from the said railroad company, under his hand and the corporate seal of the company, to the party making and holding such certificate or certificates of entry aforesaid. And such stock-land commissioner, in his capacity of trustee, shall join in such deed, and, by a special clause, release the land or town lot or lots described in such deed from the effect of this trust-deed. And the party of the first part hereby covenants that such acts of its secretary and trustee shall to all intents and purposes be deemed and considered as the specific acts of the said Iowa Central Air-Line Railroad Company.

The said Secretary and stock-land commissioner shall respectively keep a set of books in which entries shall be made showing to whom lands or town lots are sold, and how paid for, and it shall be their duty respectively to report their doings to the board of directors as often as once in three months, if required, and to the annual meeting of the stockholders.

If, at any time hereafter, it shall be deemed expedient by the party of the first part to so far change their financial plan as herein set forth, so as to release a portion of the above-described 412,500 acres of land and town lots from this trust, it shall be competent to do so after fully complying with the provisions herein contained to all persons now holding indebtedness, and to all persons holding stock outstanding or issued at the time of resolving to make such change in the financial plan herein set forth, on a plan that shall reduce the quantity of land or town lots conveyed by this trust-deed, so as to make those which are desired to be exempted from this trust-deed of an average quality and value (as near as may be) with those that shall continue subject to this trust; whereupon, it shall be the duty of the person who shall at such time be exercising the office of trustee under this trust-deed to release so much of said lands or town lots as shall be so required to be released by the party of the first part, under such a plan as above provi'ed, from the effect of this trust-deed, and acknowledge the same in due form of law, so as to be made a matter of record.

In witness whereof the said Iowa Central Air-Line Railroad Company, by and in pursuance of an order and resolution of its board of directors, made and adopted ou the eighteenth day of March, in the year eighteen hundred and fifty-eight, authorizing the execution hereof by
32 its president and secretary, under its seal in twenty-five original instruments of the same contents, tenor, and date, each of which

is to be regarded as an original deed, hath hereunto affixed his corporate seal, and hath caused the same to be attested by the signature of its president and secretary, as one of said original deeds, on the day and year first above written.

S. S. JONES,
President Iowa Central Air-Line Railroad Company.
[L. S.] GEO. W. BETTESWORTH,
Secretary.

STATE OF IOWA,
Jackson County, ss:

Be it remembered that on the 18th day of March, A. D. 1858, personally appeared before me, the undersigned, a notary public, duly commissioned and qualified in and for said county, S. S. Jones, president, and George W. Bettesworth, secretary, of the Iowa Central Air-Line Railroad Company, both of whom are personally known to me to be the identical persons whose names are affixed to the foregoing deed, as president and secretary of the railroad company, as grantors, and severally acknowledged the foregoing instrument to be their free act and deed.

In witness whereof I have hereunto subscribed my name and affixed my notarial seal on the year above written.

JOSEPH P. EATON,
Notary Public.

Ordered that the draft of a trust-deed, this day executed to William H. Gibbs, be and the same is hereby approved, and the president and secretary be authorized to affix to twenty-five instruments or deeds of trust, all of like contents, and of the same tenor and date, the corporate seal of this company and attest the same by their signatures as and for an execution thereof on the part of the company, and that the president and secretary be authorized to deliver the said twenty-five instruments to William H. Gibbs, as the deed of this company, and each one of which shall be regarded as the deed of the company, and may be recorded in any county of the State of Iowa, with the same effect as if but one of said instruments, had been executed.

33 OFFICE OF THE IOWA CENTRAL AIR-LINE RAILROAD COMPANY.

This is to certify that at a meeting of the board of directors of the Iowa Central Air-Line Railroad Company, held at the Tremont House, in the city of Chicago, on the 18th day of March, 1858, the foregoing resolutions of the board were adopted, and now stand in full force upon the records of said company.

In witness whereof the secretary of this company has hereunto set his hand, and caused the corporate seal of the company to be affixed, the day and year above mentioned.

[L. S.] GEO. W. BETTESWORTH,
Secretary Iowa Central Air-Line Railroad Company.

EXHIBIT C.

IOWA CENTRAL AIR-LINE R. R. CO.
to
M. COURTRIGHT. } Deed.

Know all men by these presents, that whereas by act of Congress approved 15th May, 1856, certain lands were granted to the State of Iowa

money for that purpose, all of which shall be condu'ted in the same manner and by the same officers and agents as is provided for in case of stock-land scrip. And such towns may be located anywhere on the line of the road where stations shall be deemed necessary, as well where the company has no title as where they shall have acquired title before making locations, and proper title-papers shall be made in like manner as is provided for in case of stock-land scrip locations.

The first applicant for any tract or tracts of lands, or town lot or lots, on presentation, at the time of making application, of land-scrip or other means provided for payment to pay for the same, and the actual payment thereof shall entitle him or her to a certificate or certificates of entry for the same from the stock-land commissioner, which certificate of entry shall entitle the party entering the same to his proper title-deed in accordance with the provisions above specified.

On issuing such certificate of entry, it shall be the duty of the stock-land commissioner to report the same to the secretary of the said railroad company, whereupon it shall be his duty (without unnecessary delay) to execute a proper title-deed with covenants of warranty of
31 title from the said railroad company, under his hand and the corporate seal of the company, to the party making and holding such certificate or certificates of entry aforesaid. And such stock-land commissioner, in his capacity of trustee, shall join in such deed, and, by a special clause, release the land or town lot or lots described in such deed from the effect of this trust-deed. And the party of the first part hereby covenants that such acts of its secretary and trustee shall to all intents and purposes be deemed and considered as the specific acts of the said Iowa Central Air-Line Railroad Company.

The said Secretary and stock-land commissioner shall respectively keep a set of books in which entries shall be made showing to whom lands or town lots are sold, and how paid for, and it shall be their duty respectively to report their doings to the board of directors as often as once in three months, if required, and to the annual meeting of the stockholders.

If, at any time hereafter, it shall be deemed expedient by the party of the first part to so far change their financial plan as herein set forth, so as to release a portion of the above-described 412,500 acres of land and town lots from this trust, it shall be competent to do so after fully complying with the provisions herein contained to all persons now holding indebtedness, and to all persons holding stock outstanding or issued at the time of resolving to make such change in the financial plan herein set forth, on a plan that shall reduce the quantity of land or town lots conveyed by this trust-deed, so as to make those which are desired to be exempted from this trust-deed of an average quality and value (as near as may be) with those that shall continue subject to this trust; whereupon, it shall be the duty of the person who shall at such time be exercising the office of trustee under this trust-deed to release so much of said lands or town lots as shall be so required to be released by the party of the first part, under such a plan as above provi'ed, from the effect of this trust-deed, and acknowledge the same in due form of law, so as to be made a matter of record.

In witness whereof the said Iowa Central Air-Line Railroad Company, by and in pursuance of an order and resolution of its board of directors, made and adopted on the eighteenth day of March, in the year eight-
een hundred and fifty-eight, authorizing the execution hereof by
32 its president and secretary, under its seal in twenty-five original instruments of the same contents, tenor, and date, each of which

is to be regarded as an original deed, hath hereunto affixed his corporate seal, and hath caused the same to be attested by the signature of its president and secretary, as one of said original deeds, on the day and year first above written.

S. S. JONES,
President Iowa Central Air-Line Railroad Company.
[L. S.] GEO. W. BETTESWORTH,
Secretary.

STATE OF IOWA,
Jackson County, ss :

Be it remembered that on the 18th day of March, A. D. 1858, personally appeared before me, the undersigned, a notary public, duly commissioned and qualified in and for said county, S. S. Jones, president, and George W. Bettesworth, secretary, of the Iowa Central Air-Line Railroad Company, both of whom are personally known to me to be the identical persons whose names are affixed to the foregoing deed, as president and secretary of the railroad company, as grantors, and severally acknowledged the foregoing instrument to be their free act and deed.

In witness whereof I have hereunto subscribed my name and affixed my notarial seal on the year above written.

JOSEPH P. EATON,
Notary Public.

Ordered that the draft of a trust-deed, this day executed to William H. Gibbs, be and the same is hereby approved, and the president and secretary be authorized to affix to twenty-five instruments or deeds of trust, all of like contents, and of the same tenor and date, the corporate seal of this company and attest the same by their signatures as and for an execution thereof on the part of the company, and that the president and secretary be authorized to deliver the said twenty-five instruments to William H. Gibbs, as the deed of this company, and each one of which shall be regarded as the deed of the company, and may be recorded in any county of the State of Iowa, with the same effect as if but one of said instruments, had been executed.

33 OFFICE OF THE IOWA CENTRAL AIR-LINE RAILROAD COMPANY.

This is to certify that at a meeting of the board of directors of the Iowa Central Air-Line Railroad Company, held at the Tremont House, in the city of Chicago, on the 18th day of March, 1858, the foregoing resolutions of the board were adopted, and now stand in full force upon the records of said company.

In witness whereof the secretary of this company has hereunto set his hand, and caused the corporate seal of the company to be affixed, the day and year above mentioned.

[L. S.] GEO. W. BETTESWORTH,
Secretary Iowa Central Air-Line Railroad Company.

EXHIBIT C.

IOWA CENTRAL AIR-LINE R. R. CO.
to
M. COURTRIGHT.
} Deed.

Know all men by these presents, that whereas by act of Congress approved 15th May, 1856, certain lands were granted to the State of Iowa

to aid in the construction of a railroad from Lyons City, northwesterly to a point of intersection with the main line of the Iowa Central Air-Line Railroad, near Maquoketa, thence on said line running as near as practicable to the forty-second parallel across the said State of Iowa, to the Missouri River in said State.

And whereas by act of the General Assembly of said state, approved July 14th, 1856, said lands were granted to the Iowa Central Air-Line Railroad Company.

And whereas said company, in accordance with and by virtue of an act of the legislature of the said State, approved 28th of January, 1857, conveyed said lands to trustees to secure the payment of construction-bonds issued by said company: Now, therefore, the undersigned trustees of said company, by virtue of provisions of said deed of trust, and in consideration of seven thousand one hundred and forty-four $\frac{57}{100}$ (7,144.57) dollars, paid by bonds numbered 64, 65, 66, 67, 68, 69, and endorsing on 63, 496\frac{57}{100}$ principal, and six hundred and forty-eight ($648) dollars interest received by them of M. Courtright of New York, have bargained and sold, and by these presents do bar-
34. gain, sell, and convey unto the said M. Courtright, his heirs, and assigns forever, the following-described lands, to wit: The sec. 9, and N. W. $\frac{1}{4}$ and S. E. $\frac{1}{4}$ of sec. 5, all in township 83, and W. $\frac{1}{2}$ of sec. 1, of t'p 84, all in R. 42 west of 5th p. m., and N. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ and S. W. $\frac{1}{4}$, N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ of sec. 1, and E. $\frac{1}{2}$ of sec. 21, and sec. 29, all t'p 84, and E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of sec. 25, of t'p 85, all in range 43 west of the 5th p. m., in the State of Iowa, containing 2,857$\frac{83}{100}$ acres, part of the lands granted by Congress as aforesaid: To have and to hold the same to the said M. Courtright, his heirs and assigns, in fee-simple absolute, forever. The said trustees in their official capacity, covenant that the said railroad company shall warrant and defend said premises to said grantee, his heirs and assigns, against the lawful claims of all persons.

In testimony, said trustees hereto sign their names this 28th day of November, 1859.

J. EDGAR THOMPSON.
GILEAD A. SMITH.
NORMAN W. ISBEL.

STATE OF IOWA, *Clinton County:*

On this 28th day of November, 1859, before me a notary public of Iowa, in and for said county, in person came Norman W. Isbel, who is personally known to me to be the identical person whose name is affixed to the above deed as grantor, and acknowledged the same to be his voluntary act and deed.

Witness my hand and notarial seal.

[L. S.]

BENJ. LAKE,
Notary Public.

STATE OF PENNSYLVANIA,
City of Philadelphia:

On this 7th day of December, 1859, before me, a notary public of Pennsylvania, in and for said city, in person came J. Edgar Thompson, who is personally known to me to be the identical person whose name is affixed to the above deed as grantor, and acknowledged the same to be his voluntary act and deed.

Witness my hand and notarial seal.

[L. S.]

EDWARD HURST,
Notary Public.

35 STATE OF NEW YORK,
City and County of New York:

On this 9th day of December, 1859, before me, a notary public of New York, in and for said city and county, in person came Gilead A. Smith, who is personally known to me to be the identical person whose name is affixed to the above deed as grantor, and acknowledged the same to be his voluntary act and deed.

Witness my hand and notarial seal.

[L. S.] JOHN EWING, JR.,
Notary Public.

Filed for record Feb. 17, 1860.
Recorded April 6, 1860.

C. H. HOLLBROOK, *Recorder.*

RECORDER'S OFFICE, MONONA COUNTY, IOWA,
Aug. 24, 1870.

I hereby certify the above to be a true and correct copy as appears of record in my office, in book B of deeds, on page 388 and 389.

JOHN E. SELLECK,
Recorder Monona Co., Iowa.

EXHIBIT D.

IOWA CENTRAL AIR-LINE R. R. *to* MILTON COURTRIGHT. } Deed.

Know all men by these presents that whereas by acts of Congress approved 15th of May, 1856, certain lands were granted to the State of Iowa to aid in the construction of a railroad from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-Line Railroad, near Maquoketa; thence on said line, running as near as practicable to the forty-second parallel, across the said State of Iowa to the Missouri River in said State; and whereas by act of general assembly of said State, approved 14th of July, 1856, said lands were
36 granted to the Iowa Central Air-Line Railroad Company; and whereas said company in accordance with and by virtue of an act of the legislature of said State, approved 28th of January, 1857, conveyed said lands to trustees to secure the payment of construction-bonds issued by said company.

Now, therefore, the undersigned trustees of said company, by virtue of the provisions of said deed of trust, and in consideration of three thousand five hundred and fifty and 85-100 (3,550.85) dollars, paid by bonds numbered 61, 62, and endorsing on 63, $\$503\frac{43}{100}$, and endorsing on 2, ($\$723\frac{40}{100}$) principal, and three hundred and twenty-four (324 dollars interest, received by them of M. Courtright, of New York, have bargained and sold, and by these presents do bargain, sell, and convey unto the said M. Courtright, his heirs and assigns forever, the following described lands, to wit:

The N. $\frac{1}{2}$ of N.E. $\frac{1}{4}$ of N.W. $\frac{1}{4}$ of sec. 5, township 87 N., the sec. 1 of t'p 86, and S. and N.E. $\frac{1}{4}$ of N.W. $\frac{1}{4}$ of sec. 5, of t'p 86 N., and sec. 29, all in t'p 87, all in range 42 west of the 5th p. m. in the State of Iowa, containing $1,420\frac{34}{100}$ acres, part of the lands granted by Congress as aforesaid. To have and to hold the same to the said M. Courtright, his heirs and assigns,

in fee-simple absolute, forever. The said trustees in their official capacity covenant that the said railroad company shall warrant and defend said premises to said grantee, his heirs and assigns against the lawful claims of all persons.

In testimony, said trustees hereto sign their names this 28th day of November, 1859.

J. EDGAR THOMPSON,
GILEAD A. SMITH,
NORMAN W. ISBEL.

Acknowledgments all the same as in proceeding deed, copied. Filed for record February 16, 1860, 9 o'clock a. m., Woodbury County.

EXHIBIT E.

IOWA CENTRAL AIR-LINE R. R. TO MILTON COURTRIGHT. } Deed.

Know all men by these presents: That whereas, by act of Congress approved May 15th, 1856, certain land' were granted to the State of

Iowa to aid in the construction of a railroad from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-Line railroad, near Maquoketa; thence, on said main line, running as near as practicable to the forty-second parallel, across the said State of Iowa, to the Missouri River. And whereas, by act of the general assembly of said State, approved July 14, 1856, said lands were granted to the Iowa Central Air-Line Railroad Company; and whereas the said company, on the 18th day of March, 1858, by its certain deed of trust of that date, conveyed to William H. Gibbs, and to his successors in such office of trustee, the lands so granted, in sections numbered three, seven, eleven, fifteen, nineteen, twenty-three, twenty-seven, thirty-one, and thirty-five, upon the terms, trust, and conditions therein declared; and whereas the undersigned has become and is the successor of the said William H. Gibbs, in such office of trustee; and whereas Milton Courtright has made full payment for the lands hereinafter described, in pursuance of the provisions of said trust-deed, that is to say, by delivering up to be canceled shares of land-scrip, numbered 53, 52, 60, and endorsing $33.08 on 55, and endorsing $1,797.92 on 37; endorsing $14,700 on 94; endorsing $3,660.80 on No. 38, with the interest thereon accrued, amounting to the sum of 32,292 dollars and 80 cents: Now, therefore, the undersigned, by virtue of the provisions of said trust-deed, and in consideration of the payments aforesaid, have bargained and sold, and by these presents do bargain, sell, and convey unto the said Milton Courtright, his heirs and assigns, forever, the following-described lands, to wit: S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ and E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of sec. 19, t'p 83 N.; sections 3, 23, W. $\frac{1}{2}$ 15, 27, of t'p 84 N.; sec. 35 and sec. 19 of t'p 85 N., R. 42 west of the 5th p. m., situated in the county of Monona, Iowa, containing four thousand and thirty-six and sixty hundredths (4,036 $\frac{60}{100}$) acres, part of the lands so granted and conveyed in trust as aforesaid: To have and to hold the same to the said Milton Courtright, his heirs and assigns forever. And in pursuance of the provisions of the said trust-deed, I, the undersigned trustee, do hereby release unto the said Milton Courtright, his heirs and assigns, forever, the lands above conveyed from the effect of this; and we, the under-

38 signed, in our official capacity, covenant that the said railroad company shall warrant and defend said premises to said grantee, his heirs and assigns, against the lawful claims of all persons. In attestation of which I, Geo. W. Bettesworth, secretary of the said Iowa Central Air-Line Railroad Company, do hereunto set my hand officially, and affix the seal of said company, this 28th day of November, 1859, and I, the said trustee, do hereunto set my hand officially the date aforesaid.

[L. S.] GEO. W. BETTESWORTH,
Secretary.
JOSEPH P. EATON, *Trustee.*

STATE OF IOWA, *Clinton County:*

On this 30th day of November, 1859, before me, a notary public of Iowa, within and for said county, in person came Geo. W. Bettesworth and Joseph P. Eaton, who are severally personally known to me to be the identical persons whose names are affixed to the above deed as grantors, and severally acknowledged the same to be their voluntary official act and deed.

Witness my hand and notarial seal.

[L. S.] BENJ. LAKE,
Notary Public.

Filed for record Jan. 6, 1860.
Recorded March 19, 1860.

C. H. HOLLBROOK, *Recorder.*

RECORDER'S OFFICE, MONONA COUNTY, IOWA,
Aug. 24, 1870.

I, John E. Selleck, recorder of Monona County, Iowa, hereby certify that the foregoing is a true and correct copy of the record of a deed in my office, in Book B of deeds, pages 327 and 328.

JOHN E. SELLECK,
Recorder Monona Co., Iowa.

39 EXHIBIT F.

IOWA CENTRAL AIR-LINE R. R. TO MILTON COURTRIGHT. } Deed.

Know all men by these presents, that whereas by act of Congress, approved 15th May, 1856, certain lands were granted to the State of Iowa to aid in the construction of a railroad from Lyons City, northwesterly to a point of intersection with the main line of the Iowa Central Air-Line Railroad, near Maquoketa, thence on said main line running as near as practicable to the forty-second parallel across the said State of Iowa, to the Missouri River; and whereas by act of the general assembly of said State, approved July 14th, 1856, said lands were granted to the Iowa Central Air-Line Railroad Company; and whereas the said company, on the 18th day of March, 1858, by its certain deed of trust of that date, conveyed to William H. Gibbs, and his successors in such office of trustee, the lands so granted in sections numbered three, seven, eleven, fifteen, nineteen, twenty-three, twenty-seven, thirty-one and thirty-five, upon the terms, trusts and conditions therein declared; and whereas the undersigned has become and is the successor of the said William H. Gibbs, in such office of trustee, and whereas, Milton Courtright has made full payment for the lands hereinafter de-

scribed, in pursuance of the provisions of said trust-deed, that is to say, by delivering up to be cancelled shares of land-scrip number 36, endorsing $1,965.92 on number 55, and endorsing $4,202.08, number 37, with interest thereon accrued, amounting to the sum of 12,168 dollars cents: Now, therefore, the undersigned, by virtue of the provisions of said trust-deed, and in consideration of the payment aforesaid, have bargained and sold, and by these presents do bargain, sell, and convey unto the said Milton Courtright, his heirs and assigns, forever, the following-described land, to wit: Sec. 15; N. W. of N. E., W. ½ S. W. ¼, W. ½ N. W. ¼, N. E. ¼ N. W. ¼ sec. 23, T. 86 N.; and N. W. ¼ of N. E. ¼ of sec. 27, of T. 86 N.; sec. 7, T. 87 N. R. 42 west of the 5th p. m., situated in the county of Woodbury, Iowa, containing one thousand five hundred and twenty-one (1,521) acres, part of the lands so granted and conveyed in trust as aforesaid. To have and to hold the same to the said Milton Courtright, his heirs and assigns forever. And in pur-
40 suance of the provisions of the said trust-deed, I, the undersigned trustee, do hereby release unto the said Milton Courtright, his heirs and assigns forever, the lands above conveyed from the effect of said trust-deeds, and we, the undersigned, in our official capacity, covenant that the said railroad company shall warrant and defend said premises to said grantee, his heirs and assigns, against the lawful claims of all persons. In attestation of which I, Geo. W. Bettesworth, secretary of the said Iowa Central Air-Line Railroad Company, do hereunto set my hand officially, and affix the seal of said company, this 28th day of November, A. D. 1859, and I, the said trustee, do hereunto set my hand officially, the date aforesaid.

[L. S.] GEO. W. BETTESWORTH, *Secretary.*

JOSEPH P. EATON, *Trustee.*

Acknowledged by secretary and trustee, November 30, 1859. Filed for record, January 13, 1860, at 9 o'clock, a. m.

CHAS. E. HEDGES, *Recorder.*

The plaintiff then offered in evidence the deposition of WILLIAM B. ALLISON, as follows:

(The defendants objected to this deposition as immaterial, irrelevant and incompetent.)

"I was a member of Congress in the year 1864, and was present at the sessions of that body. L. B. Crocker, the then president of the Cedar Rapids & Missouri Railroad Company, was in Washington most of the time during the winter and spring of 1864, seeking the passage of the act of Congress of June 2d, 1864, page 98 of 13th volume of United States Statutes at Large. Platt Smith, who represented himself to be the attorney of Milton Courtright, and other parties, to whom it was alleged that about 76,000 acres of land of the original grant to the Iowa Central Air-Line Railroad Company had been conveyed, and who also claimed to represent the Dubuque Southwestern Railroad Company, claiming a certain portion of the said land-grant in con-
41 sequence of having constructed the road from Anamosa to Cedar Rapids, a distance of over twenty miles, under an alleged contract with the Iowa Central Air-Line Railroad Company; and also claimed to represent the rights of certain bondholders who, it was alleged, had obtained a judgment of foreclosure in the district court of the United States for the district of Iowa, foreclosing the bonds of said

Iowa Central Air-Line Railroad Company, objected to the passage of the act unless a proviso was inserted saving the rights of the parties he claimed to represent. I think there was no particular dispute about the facts. After considerable negotiation between the parties, an adjustment was agreed upon by which the lands were to be drawn for the construction of the road from Anamosa to Cedar Rapids, and when drawn were to be divided equally between the Cedar Rapids & Missouri River Railroad Company, and the various parties represented by Mr. Smith, including the parties in Jackson and Clinton Counties, and the proviso which, I understood, was to protect these rights, was to be inserted in the bill.

"Mr. Price, a member of Congress from the second district, objected to the passage of the act, except that the proviso was inserted, so as to preserve the rights of his constituents, several of whom were represented to be residents of Jackson and Clinton Counties, and who had interests growing out of the Iowa Central Air Line Railroad Company, the exact nature of which I do not now remember.

"L. B. Crocker, then the president of the Cedar Rapids & Missouri River Railroad Company, was the party who sought the passage of the act.

"The only claims I now recollect which were sought to be protected by said proviso were, first, the 46,000 acres of land of said land-grant claimed by the Dubuque Southwestern Railroad Company, and other parties represented by Mr. Smith; second, the decree of foreclosure in the United States district court, which I believe it was understood was to be assigned to the Cedar Rapids & Missouri River Railroad Company, or some one in their behalf; and third, the lands of said land-grant which had been actually conveyed by the Iowa Central Air-Line Railroad Company.

"It was my understanding, at the time, that the said proviso
42 was inserted as a basis of settlement between the parties, and was assented to by them as such.

"I do not remember whether the proviso was actually offered by myself or Mr. Price, but I do know that Mr. Price insisted on protecting the claims of the parties, and that the proviso was inserted by the consent of Mr. Crocker, Mr. Smith, and Mr. Price, for that purpose."

And the deposition of JOSEPH P. EATON, as follows:

(To which deposition the defendant objected, as being immaterial, irrelevant, and incompetent.)

"I am acquainted with Milton Courtright since 1857, and with defendants since their organization. I have known the Iowa Central Air-Line Railroad Company about 16 years. I was elected special agent of the company in 1856; director and general agent in 1858; vice-president and stock-land commissioner in 1859, and president of the company in 1860.

"I do know of legislation by Congress, in the year 1864, being sought to be obtained by the Cedar Rapids and Missouri River Railroad Company, in regard to the land-grant and the claim of said company to the same. Said legislation was opposed by the Iowa Central Air-Line Railroad Company, and those having claims under the company, for the purpose of protecting their rights. I requested Hiram Price and William B. Allison to oppose said legislation, to protect said company, and those claiming under them. Price was our member of Congress; the rights sought to be protected were the rights in and to the land. It was sought

to be done by incorporating into the act a proviso expressly confining the rights of said company, and those claiming under them."

And the deposition of G. W. BETTESWORTH, as follows:

(To which defendant objected, as incompetent, irrelevant, and immaterial.)

"I was secretary of the Iowa Central Air Line Railroad Com-
43 pany from the month of April, A. D. 1856, to the year 1864. In the year 1857 a contract was let by said company to Courtright & Co., to construct and complete the whole road, covering some contracts to other parties previously let. Courtright & Co., under said contract, did a large amount of work in the year 1857. Under the contract they were to be paid in construction bonds, secured by the road and land-grant.

Upon estimates of work done under said contract, they were paid in the years 1857–8 one hundred and sixteen thousand dollars of said first-mortgage bonds.

When Courtright & Co. contracted for the building of the road they assumed the contracts with other parties, and became responsible to pay them.

All the work that was done on the road was done under the contracts with other parties, except about nine thousand dollars, between Sabula and the junction.

The plaintiff then read in evidence the act of Congress of May 14, 1856; Rev. p. 916; the act of the fifth general assembly of Iowa, of July 14th, 1856, Laws of 1856, p. 1–6; and act supplemental to the same, laws of sixth general assembly of Iowa, Laws of 1857, p. 278; and the act of Congress approved June 2d, 1864, the fourth section of the same found on page 98 of 13 U. S. Stat. at Large.

The defendant then read in evidence:

Act of Congress of May 15th, 1856, Rev. p. 916.
Act of Congress of Aug. 3d, 1854, 10 Stat. at Large, 346.
Act of 5th gen. assembly of Iowa, Laws of Extra Session, 1856, p. 1.
Act of 8th gen. assembly of Iowa, Laws of 1860, p. 29.
Act of 6th gen. assembly of Iowa, Laws of 1857, p. 278.
Act of 8th gen. assembly of Iowa, Laws of 1860, p. 40.
Act of Congress of June 2, 1864, 4 sec. 13 U. S. Statutes at Large, 356.

The case was then submitted on argument of counsel.

44 And on March 30th, 1872, said cause was resubmitted to said court for trial on the same facts, evidence, and arguments of counsel, and the following proceedings were had:

Now, to wit, on the 30th day of March, 1872, it being of the March term of said court, come the said parties, by their attorneys, and by consent of said parties the former order of the court referring this cause for trial in vacation is vacated and set aside.

And the cause coming on for final hearing, the same is submitted to the court for trial; the parties waiving a jury, and the court having heard the testimony and arguments of counsel, and the same having been submitted to the court: The court thereupon finds the title to the lands described in the petition herein to be in the plaintiff. It is therefore considered by the court that the said plaintiff is the rightful owner of the said lands and is entitled to the present possession thereof; and also, that he have and recover of the said defendants his costs herein, taxed at twenty dollars and eighty cents. And it is further ordered

that a writ of possession issue accordingly; to all of which findings, rulings, judgments, and orders of the court the said defendants at the time except.

And on the day of April, 1872, the defendants perfected an appeal from said judgment to the supreme court, by serving upon the plaintiff and upon the clerk of said court a notice of appeal.

The above and foregoing contains all the testimony in said case.

JAMES H. ROTHROCK,
Judge, &c.

45 *Assignment of errors.*

The defendants say there is a manifest error on the face of the record in this, to wit:

1. The court erred in admitting the depositions of William B. Allison, Joseph P. Eaton, and G. W. Bettesworth and each of them.

2. The court erred in finding for the plaintiff and against the defendant, and in entering judgment for the said plaintiff in accordance with such finding.

3. The court erred in not finding for the defendants in and not entering judgment in their favor.

N. M. HUBBARD,
ISAAC COOK,
Attorneys for Defendants.

46 ADDENDA.

Additional stipulation of facts.

It is also agreed that there has been certified to the State, under the act of May 15th, 1856, on account of the road built near the 42d parallel, and claimed by the Cedar Rapids and Missouri River Railroad, in all 778,595.78 acres; of this amount the title to 109,756.85 acres is in dispute on account of an alleged conflict with the Des Moines River grant, and about 28,000 acres of the lands last mentioned, known as "river lands," have been reconveyed by the Cedar Rapids and Missouri River Railroad Company to the State, without receiving any money for such conveyances. The act of March 26, 1860, was accepted by the C. R. & M. R. Railroad Company in the manner prescribed by the act.

There has also been conveyed to said railroad company under the act of June 2d, 1864, 342,406.68 acres.

It is also agreed that the Iowa Central Air-Line Railroad Company did but little work on its line of road after the fall of 1857, and none after the spring of 1858.

PLATT SMITH,
For Plaintiff.
ISAAC COOK,
Attorney for Defendants.

47 At an argument term of the supreme court of Iowa, begun and held at the city of Dubuque, in said State of Iowa, on Tuesday the 16th day of April, A. D. 1872—present, the Hon. Joseph M. Beck, ch. j., Hon. William E. Miller, Hon. Chester C. Cole, Hon. James G. Day, judges—when the following among other proceedings were had and done, to wit:

MONDAY, *April* 22*d*, 1872.

MILTON COURTRIGHT
vs.
THE CEDAR RAPIDS AND MISSOURI RIVER R'Y Co. et al., app'l'ts. } Appeal from Linn district court.

On this day, this cause coming on for hearing is submitted to the consideration of the court on printed and oral argument of counsel.

48 And at the June term, A. D. 1872, of said court, the same members of court being present, the following entry was made of record in said case.

WEDNESDAY, *December* 11*th*, 1872.

In this cause the court, being now fully advised in the premises, file their written opinion affirming the judgment of the district court, Miller, J., dissenting. It is therefore considered and adjudged by the court that the judgment of the court below be, and it hereby is, affirmed, and that a writ of procedendo issue accordingly. It is further considered by the court that the plaintiff have and recover of and from the defendant the costs of this appeal, taxed at $, and that execution issue therefor. In the decision of this case the act of Congress, approved May 15th, 1856, granting lands to the State of Iowa to aid in the construction of certain rail-
49 roads in said State was construed, the court holding that by virtue of said act, the State of Iowa had power to grant to the Iowa Central Air-Line Railroad Company one hundred and twenty sections of land in advance of the completion of any part of its railroad, and that the lands mentioned in the record were rightfully selected and sold by said railroad company, under the powers granted by said act of Congress of May 15th, 1856. And the court denied the opposite construction of said act, namely, that the railroad company could not acquire title to any lands excepting as the road should be built in sections of twenty miles each, and that the lands could only be selected begin'ing at the Mississippi River and thence west, as claimed by the defendant and appellant.

J. M. BECK, *Ch. Justice.*

50 *Petition for a writ of error.*

In the supreme court, State of Iowa.

M. COURTRIGHT
vs.
THE CEDAR RAPIDS AND MISSOURI RIVER R'Y Co. et al.

To the honorable chief justice of the supreme court of Iowa:

The petition of the Cedar Rapids and Missouri River Railroad and the Iowa Railroad Land Company above named respectfully shows, that in the judgment and decision of the above-entitled cause by the supreme court of Iowa, there was drawn in question the construction of certain statutes of the United States, and the said judgment and decision were against the privileges and just claims, as claimed by these petitioners under the same.

51 Your petitioners therefore pray your honor to examine the record in said suit herewith presented to you, and thereupon allow a writ of error in said cause from the Supreme Court of the United States to the supreme court of Iowa, pursuant to the acts of Congress of the United States in such cases made and provided.

The Cedar Rapids and Missouri River Railroad, and the Iowa Land Company,

By COOK & HUBBARD, *Their Attornies.*

(Endorsed on the back:) The writ of error as within prayed is allowed this 13th day of December, 1872.

J. M. BECK,
Chief Justice.

Filed December 13th, 1872.

C. LINDERMAN, *Clerk.*

52 UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the supreme court of the State of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Cedar Rapids and Missouri River Railroad and the Iowa Railroad Land Company, plaintiffs in error, and Milton Courtright, defendant in error, wherein was drawn in question the construction of certain statutes of the United States, and the decision was against the right, title, and privilege claimed under said statutes, a manifest error hath happened, to the great damage of the said The Cedar Rapids and Missouri River Railroad & the Iowa Railroad Land Company, plaintiffs in error, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, & full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that
53 then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court, to be then and there , that the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the 14th day of December, in the year of our Lord one thousand eight hundred & seventy-two, & the Independence of the United States the ninety-seventh year.

[SEAL.]

GEORGE B. CORKHILL,
Clerk Circuit Court U. S. for Dist. of Iowa.

Filed Dec. 14, '72.

C. LINDERMAN, *Clk.*

54 United States of America, to Milton Courtright, greeting:

You are hereby cited and admonished to appear at the Supreme Court of the United States, to be holden at Washington, D. C., on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Iowa, wherein the Cedar Rapids and Missouri River Railroad and the Iowa Railroad Land Company are plaintiffs in error, and Milton Courtright is defendant in error,

and then show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Joseph M. Beck, chief justice of the supreme court of Iowa, this 13th day of December, 1872.

J. M. BECK,
Chief Justice.

I hereby acknowledge due service of this citation and the receipt of a true copy of the same this 22 day of December, 1872.

MILTON COURTRIGHT,
By PLATT SMITH, *His Attorney.*

(Indorsed:) Supreme court. Milton Courtright ag't C. R. & M. R. R. & Iowa R. R. Land Co. Citation. Filed Dec. 27, '72, C. Linderman, cl'k.

55 *Bond.*

Supreme Court of the United States.

MILTON COURTRIGHT
vs.
THE CEDAR RAPIDS AND MISSOURI RIVER Railroad Company and The Iowa Railroad Land Company.

Know all men by these presents that we, The Cedar Rapids and Missouri River Railroad Company and the Iowa Railroad Land Company as principals, and J. Van Deventer, P. E. Hall, John Weare, and John F. Ely, as sureties, are held and firmly bound unto Milton Courtright in the sum of ten thousand dollars, to be paid to the said Milton Courtright, his executors and administrators; to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our successors and assigns, executors and administrators, firmly by these presents, sealed with our seals, and
56 dated December 19, A. D. 1872.

Whereas the above-named Cedar Rapids and Missouri River Railroad Company and the Iowa Railroad Land Company have prosecuted a writ of to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the Supreme Court of the State of Iowa: Now, therefore, the condition of this obligation is such that if the above-named Cedar Rapids and Missouri River Railroad Company and The Iowa Railroad Land Company shall prosecute their writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE CEDAR RAPIDS & MISSOURI RIVER RAILROAD,
By its attorney of record—
ISAAC COOK.
IOWA RAILROAD LAND COMPANY,
[SEAL.] By J. VAN DEVENTER, *President.*

Signed & sealed in presence of—
N. M. HUBBARD.

57

J. VAN DEVENTER, [SEAL.]
P. E. HALL, [SEAL.]
JOHN WEARE, [SEAL.]
JOHN F. ELY, [SEAL.]
Sureties.

STATE OF IOWA,
County of Linn, ss :

J. Van Deventer, P. E. Hall, John Weare, & John F. Ely, being each duly sworn, each for himself says, that he is a resident of this State, and is worth more than ten thousand dollars beyond the amount of his debts, and that he has property liable to execution in this State to the amount of five thousand dollars and upwards.

J. VAN DEVENTER.
P. E. HALL.
JOHN WEARE.
JOHN F. ELY.

58 STATE OF IOWA,
Linn County, ss :

Subscribed in my presence, and sworn to before me, the undersigned, a notary public in and for Linn County, Iowa, by the above-named J. Van Deventer, P. E. Hall, John Weare, and John F. Ely, each for himself.

In witness whereof I have hereunto set my hand and notarial seal this 27th day of December, 1872.

[SEAL.]

E. G. STANLEY,
Notary Public, Linn County, Iowa.

(Endorsed as follows:) The within bond is approved. Dec. 29th, 1872.

J. M. BECK,
Chief Justice.

Filed December 30th, 1872.

C. LINDERMAN, *Clerk.*

59 STATE OF IOWA, *Supreme Court :*

I, C. Linderman, clerk of the supreme court of Iowa, do hereby certify that the foregoing pages contain a full, true, and complete copy of the record filed in my office, in the case of Milton Courtright against The Cedar Rapids & Missouri River Railroad Company et al., of the record entries made by said court, in said case, and of the petition for a writ of error, and of the bond therein, to which I have attached the orignal writ of error and citation, copies of which are on file in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court this 6th day of February, A. D. 1873.

[SEAL.]

C. LINDERMAN,
Clerk Supreme Court Iowa.

60 Supreme Court, December term, 1872.

MILTON COURTRIGHT,
vs.
THE CEDAR RAPIDS AND MISSOURI RIVER Railroad Company et al., appellants.

Appeal from Linn district court.

This is an action at law to recover certain lands in the counties of Woodbury and Monona. There was a trial to the court without a jury, and a judgment for plaintiff. Defendants appealed. The facts of the case are fully set out in the opinion of the court.

Isaac Cook, U. M. Hubbard, for appellants; Platt Smith and A. Chapin, for appellees.

61 BECK, CH. J.:

The title to the lands involved in this suit rests upon and involves the construction of certain acts of Congress and of the general assembly of this State. The lands themselves are a part of the Congressional grant to the State of May 15, 1856, to aid in the construction of a railroad from Lyons northwesterly to the line of the Iowa Central Air-Line Railroad, and thence to the Missouri River. The plaintiff claims, under the Iowa Central Air-Line Railroad Company, an incorporation which, he alleges, succeeded to all the rights of the State to the lands in question under a legislative grant.

The defendants claim the land under a subsequent act of the general assembly of the State repealing the act conferring the lands upon plaintiff's grantor, and bestowing them upon the Cedar Rapids and Missouri River Railroad Company, one of the defendants, in consideration of the construction of its railroad. A particular statement of the legislation, both State and national, in regard to these lands, as well as of the other facts of the case, is demanded.

62 I. By the act of May 15, 1856, (chap. 28, sess. 1, 34 Congress, 11 Statutes at Large, page 9,) Congress granted to the State of Iowa for the purpose of aiding in the construction of certain railroads therein named "every alternate section of land, designated by odd numbers, for six sections in width on each side" of the respective roads.

The first section of the act after making the grant of the lands by the description just quoted, and prescribing the manner of supplying deficiencies resulting from the sales of lands along the lines of the roads by the United States, &c., contains this provision: "that the lands hereby granted for and on account of said roads severally, shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever." The other parts of this statute necessary to be quoted are the following:

"SECT. 3. And be it further enacted, That the said land hereby granted to the said State shall be subject to the disposal of the legislature thereof for the purpose aforesaid, and no other." * * * * *

"SECT. 4. And be it further enacted, That the lands hereby

63 granted to said State shall be disposed of by said State only in manner following, that is to say: That a quantity of land not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each side of said roads, may be sold, and when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said road is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of said roads, may be sold, and so, from time to time, until said roads are completed; and if any of said roads are not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States."

By the act of the general assembly approved July 14, 1856, (Laws, extra session fifth general assembly, chap. 1,) the grant made by Congress to the State in the foregoing statute was accepted, and provisions

made to carry out the trust thereby conferred. The sections of
64 this act which it is important to consider are in the following language:

"SECT. 1. Be it enacted by the general assembly of the State of Iowa, that the lands, rights, powers, and privileges granted to and conferred upon the State of Iowa by the act of Congress entitled, &c., (the act above cited,) be, and the same are hereby, accepted upon the terms, conditions, and restrictions contained in said act of Congress."

"SECT. 4. That so much of the lands, interests, rights, powers, and privileges as are, or may be, granted and conferred in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air-Line Railroad, near Maquoketa, thence on said main line, running as near as practicable to the forty-second parallel, across the said State to the Missouri River, are hereby disposed of, granted, and confirmed to and upon the Iowa Central Air-Line Railroad Company, a body corporate, created and existing under the laws of the State of Iowa."

"SECT. 8. The grants aforesaid are made to each of said companies respectively, upon the express condition that in case either of
65 such railroad companies shall fail to have completed and equipped seventy-five miles of its road within three years from the first day of December next, thirty miles in addition in each year thereafter for five years, and the remainder of their whole line of road in one year thereafter, or on the first of December, A. D. 1865, then and in that case it shall be competent for the State of Iowa to resume all rights conferred by this act upon the company so failing, and to resume all rights to the lands hereby granted and remaining undisposed of by the company so failing to have its length of road completed in manner and time as aforesaid."

The Iowa Central Air-Line Railroad Company accepted the grant made by the foregoing act, in accordance with its terms and conditions, and made a survey and location of its line of road. In the years 1857 & 1858 it did a large amount of grading upon its road between Lyons and Maquoketa. In 1858 the incorporation issued certain deeds of trust to secure construction-bonds, land-scrip, &c. The plaintiff was one of the contractors who did the grading upon the road, and received in payment therefor bonds and land-scrip of the company, which,
66 under the terms of the deeds of trust, were surrendered, and the land in controversy was conveyed therefor by the company to plaintiff in November, 1859. It is not questioned that if the railroad corporation had the ability to convey a title to the lands it is vested in plaintiff under the deeds to him.

The Iowa Central Air-Line Railroad Company having failed to complete any part of its road, the general assembly, by an act approved March 17, 1860, (acts eight'general assembly, ch. 25,) declared "that all the rights to the lands, interests, rights, powers, and privileges heretofore conferred or intended to be conferred upon the Iowa Central Air-Line Railroad Company, by an act approved July 14, 1856, entitled, &c., * * * be, and the same are hereby, absolutely and entirely resumed by the State." "Sect. 2. The fourth section of said act approved July 14, 1856, and all other acts and parts of acts inconsistent with this act, are hereby repealed."

By the act of March 26th, 1860, (acts eighth gen'l assembly, ch. 37,) the lands, interests, rights, powers, and privileges conferred by the act of July 14, 1856, were granted to the Cedar Rapids and Missouri
67 River Railroad Company, the statute declaring that the right,

Isaac Cook, U. M. Hubbard, for appellants; Platt Smith and A. Chapin, for appellees.

61 BECK, CH. J.:

The title to the lands involved in this suit rests upon and involves the construction of certain acts of Congress and of the general assembly of this State. The lands themselves are a part of the Congressional grant to the State of May 15, 1856, to aid in the construction of a railroad from Lyons northwesterly to the line of the Iowa Central Air-Line Railroad, and thence to the Missouri River. The plaintiff claims, under the Iowa Central Air-Line Railroad Company, an incorporation which, he alleges, succeeded to all the rights of the State to the lands in question under a legislative grant.

The defendants claim the land under a subsequent act of the general assembly of the State repealing the act conferring the lands upon plaintiff's grantor, and bestowing them upon the Cedar Rapids and Missouri River Railroad Company, one of the defendants, in consideration of the construction of its railroad. A particular statement of the legislation, both State and national, in regard to these lands, as well as of the other facts of the case, is demanded.

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made to carry out the trust thereby conferred. The sections of
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66 under the terms of the deeds of trust, were surrendered, and the land in controversy was conveyed therefor by the company to plaintiff in November, 1859. It is not questioned that if the railroad corporation had the ability to convey a title to the lands it is vested in plaintiff under the deeds to him.

The Iowa Central Air-Line Railroad Company having failed to complete any part of its road, the general assembly, by an act approved March 17, 1860, (acts eight general assembly, ch. 25,) declared "that all the rights to the lands, interests, rights, powers, and privileges heretofore conferred or intended to be conferred upon the Iowa Central Air-Line Railroad Company, by an act approved July 14, 1856, entitled, &c., * * * be, and the same are hereby, absolutely and entirely resumed by the State." "Sect. 2. The fourth section of said act approved July 14, 1856, and all other acts and parts of acts inconsistent with this act, are hereby repealed."

By the act of March 26th, 1860, (acts eighth gen'l assembly, ch. 37,) the lands, interests, rights, powers, and privileges conferred by the act of July 14, 1856, were granted to the Cedar Rapids and Missouri
67 River Railroad Company, the statute declaring that the right,

title to, and interest in the lands held by the State, and nothing more, was transferred, and that "in no event shall said company have any claim or recourse against the State for any defect in the title or conveyance of said lands."

The lands conveyed to plaintiff by the Iowa Central Air-Line Railroad Company, with other lands conveyed prior to February 16, 1860, amount to one hundred and twenty sections. They are located in Woodbury and Monona Counties, and in townships numbering from 83 to 87 north, and ranges 42 and 43 west, and are west of parts of the grant from which the amount of lands could have been selected. One hundred and twenty sections or more of the original grant lie east of range 33.

The lands in controversy were duly selected under the provisions of the act of Congress making the grant, and were certified to the State by the Secretary of the Interior, December 27, 1858.

Congress, by act of June 2, 1864, recognized the grant made by the State to the Cedar Rapids and Missouri River Railroad Company. The act is amendatory to the act making the original grant. But in section 4 it is expressly provided, "that nothing in this act shall be con-
68 strued to interfere with, or in any manner impair, any rights acquired by any railroad company named in the act to which this is an amendment, or the rights of any corporation, person or persons, acquired through any such company; nor shall it be construed to impair any vested rights of property, but such rights are hereby reserved an confirmed."

II. We are required to determine, upon the statutes and facts above set out, whether plaintiff holds the title to the lands involved in the suit. The acts of Congress of the 15th of May, 1856, first demands consideration in prosecuting this inquiry.

This statute grants to the State certain lands to aid in the construction of railroads named therein. The object of the grant is explicitly stated to be the construction of those railroads, and in order to effectuate such purpose, certain conditions restricting the sale of all the lands are prescribed. It is provided that a quantity of land not exceeding one hundred and twenty sections, included within a continuous length of twenty miles of the road, may be sold, and when twenty miles of
69 the road are completed, another like quantity may be sold, and so on till the road is completed. Now, it will be observed that, in order to authorize the sale of the first one hundred and twenty sections, no part of the road is required to be built, and no restriction of any kind is placed upon the disposition of that quantity of the land. It is too plain to admit of question that the State was authorized to dispose of 120 sections of land before the road or any part of it was built. The language of the act will admit of no other construction.

Now, while, as we have stated, the object of the grant was to aid in the construction of the railroad, the successful appropriation of the first 120 sections to that purpose, or the completion of any part of the road, is not made a condition to the grant of that quantity or a condition precedent to the exercise of the power of sale thereof by the State. Congress relied upon the good faith of the State in order to secure the building of the first twenty miles of railroad, granting the power to sell the lands as soon as the title vested in the State, for the purpose, it may be, of enabling the State to apply the proceeds at once to the work.
70 But whatever may have been the intention of Congress, certain it is the law imposes no restriction upon the sale of the first one hundred and twenty sections. The condition applies to the lands re-

maining after that quantity has been sold. This is made very plain by the language of the last clause of sect. 4, which is to the effect that if the road is not completed in ten years, no further sale shall be made, and the lands unsold shall revert to the United States. Now, this provision contemplates the disposition of the land as provided in the preceeding part of the section, namely, that 120 sections may be sold before any part of the road is completed, or even commenced. The failure to complete any part of the road, it is expressly declared, shall only work a forfeiture of the land remaining unsold. It is plain that the law contemplates the sale of a part of the land, the 120 sections, before the completion of any part of the road.

The act of the fifth general assembly of July 14, 1856, (Laws, 1856, chapter 1,) accepts the grant made by the act of Congress of May 15, 1856, upon the terms, conditions, and restrictions therein expressed.

71 The land in controversy, with the other lands of the grant set apart for that purpose, as well as all the interest, rights, powers, and privileges granted and conferred by the act of Congress upon the State, are disposed of, granted, and conferred to and upon the Iowa Central Air-Line Railroad Company, (sect. 5.) This grant is upon the condition that in case the railroad corporation shall fail to complete seventy-five miles of the road within three years, and 30 miles each year for five years thereafter, and the remainder of the whole line in one year thereafter, or on the first of December, 1865, then the State may resume all rights to the lands granted and remaining undisposed of by the company. It will be noticed that this act does not provide for the sale of the lands by the railroad company, or rather imposes no restriction or condition upon the sale. So far as this statute is concerned, the grant to the company is absolute, except as to the conditions, that if the road should not be completed as provided for, the State may resume the lands remaining unsold. There is to be found nothing in this act depriving the company of the right to sell the lands granted, if it be admitted that the act passed the title to the grantee therein, and upon that question we will have something to say hereafter.

72 What restriction existed upon the right of the company to sell the lands? None whatever, except those imposed by the act of Congress making the grant. Though the grant by the State was absolute, reserving only the power to resume all rights to the lands remaining undisposed of upon the failure of the company to complete the road in the manner and time prescribed, yet the conditions and restrictions imposed by the act of Congress upon the State rested upon the railroad company. It took just such a title as the State held, and received it burdened by the same conditions, and none other. As we have seen, under the act of Congress the State had power to sell 120 sections of land without any restriction, the remainder only as the road was constructed. This right and this title the State conferred and granted to the railroad company. It received an absolute title to the 120 sections, and a right to convey the same without restriction; its title to the remainder of the land was conditional, and its power to sell subject to the restriction above stated.

Certain sections of the act last cited make provisions to secure the rights of persons, who, at the time of the grant, held claims by

73 actual occupation and improvements upon the lands granted by Congress. It directs that such persons shall prove their claims before the judge of the county where the lands lie, and shall receive from such judge a certificate of the fact, which entitles the holder to purchase the land at $2.50 per acre.

This certificate is required to be filed with the secretary of the railroad company, and, in the language of the statute, "shall entitle the holder, or his assigns, to the possession of said lands until the title shall become vested in the company." Upon this language defendants' counsel base an argument in support of their position "that no title to the land was intended to be vested in the company by the act alone." The argument is, that, as the statute declares the party in possession of the land shall hold it "until the title shall become vested in the company," this language is a direct declaration that the railroad company acquired no title by force of the act alone. The several provisions of the act must, if possible, be made to harmonize by construction. We have just seen that other provisions will bear no other interpretation than that the title and right to dispose of the first 120 sections were vested by
74 the statute in the company. The title and right of disposition to the remainder of the lands we have seen was conditional, depending upon the completion of certain parts of the road. By applying the language under consideration to these lands, a subject is found upon which the provision may operate. Its force and effect is preserved and the other provisions of the statute are sustained. The whole statute, by this construction, is permitted to stand. We conclude that the language and provision under consideration are applicable alone to the lands remaining undisposed of after the sale of the first 120 sections of land.

In support of their posiition that the grant of the lands by the State to the railroad company rests upon conditions precedent, which must be performed before title vests, counsel cite The State ex. rel. vs. Kirkwood, 14 Iowa, 162. This was an action brought to compel the Governor of the State by writ of mandamus to certify the completion of certain parts of the Cedar Rapids and Missouri Railroad, as contemplated by sect. 4 of the act of Congress of May 15, 1866, the statute granting lands to the State for railroad purposes. But it will be seen by reference to the section named that the certificate required
75 had no relation to the 120 sections of land, the sale of which is first provided for, but to the remainder of the grant. Neither did the cases cited by counsel involve any part of these 120 sections for this very reason. The question as to whether the title granted by the State for these 120 sections rested upon a condition precedent to be performed by the railroad company was not raised nor determined.

III. As has already been stated, the 120 sections of land conveyed by the Iowa Central Air Line Railroad Company, of which the lands in controversy are a part, were selected west of range 33. A sufficient quantity of the lands of the grant was situated east of that range, from which the selection could have been made. Defendants rely upon this fact to defeat plaintiff's title. This position is based upon section 4 of the act of Congress of July 15, 1856, above quoted, which provides that upon the completion of twenty miles of this road, 120 sections of land included within a continuous length of twenty miles of such road made be sold. The language may be understood to limit the selection of the land along the line of the completed road; upon this point we express no opinion.

76 But certain it is that the provision does not apply to the 120 sections to be selected and sold before the road or any part is finished. The language applicable to such land is found in the first part of the section, and is as follows: "A quantity of land not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, may be sold."

There is nothing in the language fixing the locality of the land selected further than it shall be within a continuous length of twenty miles of this road. It cannot mean that the selection shall be made along the road when completed; for, as we have seen, the lands were authorized to be sold before any part of the road was finished. Neither can it mean that the lands must lie along the east or west end of the road, for the act itself recognizes the fact that sufficient Government lands were not found upon the eastern extremity of the road to fill the grant. The defendants claim that the selection should have been made beginning with the most easterly vacant lands in the grant and going west twenty miles. We observe nothing in the words of the law au-
77 thorizing this construction. There is no direction as to the selection except that it be confined within the limits of twenty miles along the road. No word or phrase is used indicating an attempt to express the will of the legislators to the effect claimed by defendants. To us it clearly appears that the location of the lands within the twenty continuous miles named, was left to the choice of the railroad company.

The argument in support of the construction adopted by defendants, most relied upon by them, is based upon the object of Congress in making the grant, namely, the building of a railroad through the public lands, and thereby advancing the value of lands not appropriated, and securing their speedy occupation by actual settlers. The road, it is insisted, was intended to be commenced at the Mississippi River, and constructed by several successive sections westward. Advantages are attempted to be pointed out to the Government resulting from this manner of selection. We are unable to admit the force of the argument or to see clearly the advantages to the United States which would result from choice of the lands upon the eastern part of the grant. But conceding that such advantages
78 are real, Congress failed to secure them by express words. We certainly cannot interpolate such words by construction, and thus create a reading for the statute which it does not in fact possess. We are of the opinion that benefits to result to the Government from a particular construction must not determine the proper interpretation of the law. The Government would doubtless be benefited by restrictions or limitations upon the grant, which would operate to defeat it; but this fact should rather weigh against such a construction than in its support.

These views are not in conflict with the rule recognized in The Dubuque and Pacific Railroad Co. vs. Litchfield, 23 Howard, 66, cited by defendants' counsel, to the effect that in construing a legislative grant, if the words fairly admit of different meanings, that one must be adopted which is most favorable to the interests of the public.

In our judgment, by no fair construction can conflicting meanings be put upon the law under consideration. The interpretation insisted upon by defendants' counsel is forced and unnatural, and can only be maintained by making the language of the law give way to fact and circumstances entirely extraneous.

79 The learned counsel of defendants make a statement of fact in their brief, which, in our opinion, overthrows their argument upon this point. They say that if the selection had taken the most easterly vacant lands, 120 sections could not have been found in any continuous twenty miles."

The law requires the selection to be made within "twenty continuous miles" of the road; defendants say this twenty miles must begin at the east, and yet admit that in such "continuous twenty miles" 120 sections of land could not have been found. Now, here is a state of facts

under which it was absolutely impossible to carry out the statute as interpreted by counsel. If their interpretation be adopted, it must be conceded that the 120 sections could have been located along two or more divisions of the road of twenty continuous miles, a direct violation of the plain language of the law, or that the first 120 sections of land could not have been located at all, which would directly defeat that provision of the statute.

The fact admitted by defendants' counsel as above stated undoubtedly was in the mind of the legislators when the statute was enacted, and accounts for the wording of the provision under consideration, whereby the location is not confined to the lands in the eastern part of the grant. Under the terms of the grant, 120 sections were appropriated to each twenty miles of road and no more, except when selections were made to supply deficiencies. Now, when the railroad company is limited to take 120 sections in "twenty continuous miles," the statute was so drawn that the location could be made upon a line of twenty continuous miles which did contain 120 sections. If, on account of entries of the public lands upon eastern divisions of the road, 120 sections could not be found in the distance specified, the law is so worded that the railroad company was permitted to make a selection elsewhere.

In reaching our conclusion herein, one member of the court, Mr. Justice Cole, gives much consideration and weight to the thought that the grant by Congress was made to aid in the construction of the railroad between the two termini named; that the act does not expressly specify where it shall be begun, nor in which direction constructed; that it distinctly provides for the sale of one hundred and twenty sections in advance of the construction of any part of the railroad; hence the first one hundred and twenty sections may be taken or sold in a continuous twenty miles anywhere between the two termini, for it may not and need not by the terms of the act be known when they are taken and sold, where the construction of the railroad will, in fact, begin. This thought is greatly strengthened by the special phraseology of the act, which, after providing for the sale of the first one hundred and twenty sections of land, then further provides that "when the governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of said road is completed, then another quantity of land not to exceed one hundred and twenty sections * * * * may be sold."

IV. The act of Congress granting the lands to the State, and the State law conferring them upon the Iowa Central Air-Line Railroad Company, were sufficient after selection provided for to pass the title and vest in the railroad corporation without any further assurances.

The legislative act of the sovereign power is just as effective for that purpose as could be any formal conveyance executed by its officers, and so it has been repeatedly held. Laws of Congress and of the States, treaties, and grants by the proper authorities, have been held sufficient evidence of titles without other assurances. (Lessurer et. al. vs. Price, 12 Howard, 39; Rutherford vs. Green's heirs, 2 Wheaton, 196; The United States vs. Perchman, 7 Peters, 51; Mitchell et. al. vs. The United States, 9 Peb., 711; Ladya vs. Roland et. al. 2 Howard, 581; United States vs. Brooks et al. 10 Howard, 442.)

V. The congressional and State laws having vested an absolute right and title to the land in question in the Iowa Central Air-Line Railroad Company, the act of July 14, 1856, whereby the State sought to resume the land, did not divest plaintiff's title acquired from the railroad com-

pany. The statutes granting the lands are in the nature of contracts, and the rights secured thereby cannot be impaired by subsequent legislation. This position is fully admitted by defendants' counsel.

It follows that plaintiff holds the legal title to the lands in controversy, and that the decision of the district court must be sustained.

We do not find it necessary to follow the counsel of the respect-
83 ive parties in their arguments upon several branches of the case, and more than one point is made in their briefs which we do not pass upon, as the views above stated are decisive of the case.

Affirmed.

MILLER, J., dissenting.

I cannot concur in the construction put upon the act of Congress of May 15, 1856, in the opinion of the majority or with the conclusion reached. My views of the proper construction of that act are stated in the case of the Cedar Rapids and Mo. R. R. Co. et al. vs. Carroll County et al., announced at the present term, to which I refer, desiring to add nothing further.

84 I, C. Linderman, clerk of the supreme court of Iowa, do hereby certify that the foregoing pages contain a full, true, and complete copy of the opinion of said court in the case of Milton Courtright vs. The Cedar Rapids and Missouri River Railroad Co. et al., as full, true, and complete as the same remains on file and of record in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court this 21st day of August, A. D. 1873.

[SEAL.] C. LINDERMAN, *Clerk.*

(Indorsed:) No. 442. The Cedar Rapids & Missouri River R. R. Co. & al., pl'ffs in error, vs. Milton Courtright. Copy of opinion. Filed 27th August, 1873.

(Indorsement on cover:) No. 442. The Cedar Rapids and Missouri River Railroad Co., and the Iowa Railroad Land Company, plaintiffs in error, vs. Milton Courtright. Iowa sup. court. Filed 27th June, 1873.

REC. 442—4

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IN THE SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, A. D. 1874.

THE CEDAR RAPIDS AND MISSOURI RIVER RAILROAD COMPANY, AND THE IOWA RAILROAD LAND COMPANY, PLAINTIFFS IN ERROR,

VS.

MILTON COURTRIGHT.

BRIEF OF PLATT SMITH FOR COURTRIGHT.

In Error to the Supreme Court of the State of Iowa.

This is an action at law which was originally brought by Courtright to recover a large number of tracts of land. The defendants in the court below pleaded that Courtright had no title. See Record page 2. On the same page will be found a stipulation in which it was agreed that certain *evidence* might be introduced. The court below being a court for the trial of questions of law and fact, it was highly proper that evidence should be considered. The record contained a considerable detail of evidence. Some of it consisted of depositions. See Record pp. 26, 27 and 28.

On the latter page, near the bottom, will be found the statements that the case was submitted to the judge for trial and the parties waving a jury. Judgment was entered for the plaintiff; the case was appealed to the Supreme Court of the State where the judgment below was affirmed. The case is brought here by writ of error, I suppose, under the twenty-fifth section of the judiciary act. ec. 3088 of the Revision of 1860, provides:

"Upon the trial of questions of fact by the court, in an "action by ordinary proceedings, it shall not be necessary "for the court to state its finding, except generally for the 'plaintiff or defendant, unless one of the parties, before "any testimony is offered, requests it, in which case its "decision shall be given in writing, stating the facts found, "and the legal conclusions founded thereon, separately, "all of which shall be entered on the record." In the case of Byington vs. Woodward and Warde, 9th Iowa P. 362, Wright, Chief Justice, says: "In submitting the case "to the court, the parties reserved to themselves the right "to except, in the same manner, as if it had been tried by "a jury. This was their legal right, without agreement. "The court took the place of the jury, and its finding, has "the same degree of conclusiveness as a verdict. And we "are now called upon to review this judgment in the same "manner that we would the verdict of a jury. We are "to be governed by the same rules, and give every pre-"sumption in favor of its correctness. Williams vs. Sout-"ner and Drew, 7 Iowa 435."

If the Revision had never been enacted, the above proposition of law would be regarded as correct. I think it needs no citation of authorities to prove that the decision of the court below will be presumed to be correct, until the contrary shall be made to appear by the record. The defendants in the District Court of Iowa were satisfied, at the time of the decision, otherwise they would, as the Statute provides, have required the District Judge to state the *ultimate facts* found so that the decision could be reviewed by an appellate Court. These ultimate facts should

have been contained in a bill of exception. Mosier vs. Hull, 15 Iowa, 603. Instead of pursuing that course the defendants have brought up the case with all the details given in evidence, including deeds, depositions, &c., but no statement of ultimate facts. They expect this court to act as a jury to establish the fact from the evidence, and then decide the questions of law, most of which questions would be of a non-federal character. It must be recollected that this case comes here under the twenty-fifth section of the judiciary act, and that the court will be confined to questions of federal cognizance only. In the case of Graham vs. Bayne, 18 Howard, page 62, Grier, Justice, says: "If the parties agree to submit the trial "both of fact and of law to the judge, they constitute "him an arbitrator or referee whose award must be "final and conclusive between them." And on page 63 of "the same case, he continues: "No mere agreement of "council can substitute evidence of facts in place of facts, "or require the opinion of this court on an imperfect "statement of them. A writ of error can not by these "methods be converted into a chancery appeal, nor a "court of error into appellate arbitrators." The case of Burr vs. the Des Moines Navigation Company, 1st Wallace, page 99, is also directly in point. The plaintiffs submitted their case to the judge without a jury; he took no exceptions, nor did the judge find any ultimate facts he set forth in the record acts of Congress and of the Legislature of Iowa, depositions, deeds, improvements made, and the evidence in extenso. Miller, Justice, delivered the opinion and refused to act as an arbitrator or a jury. I consider that case a parallel to this in every particular, and commend it to the careful consideration of this court.

The assignment of errors in the Supreme Court of Iowa were as follows to-wit:

"First. The court erred in admitting the deposition of "William B. Allison, Joseph P. Eaton and G. W. Bettes-"worth, and each of them.

"2nd. The Court erred in finding for the plaintiff and "against the defendant, and in entering judgment for the "said plaintiff in accordance with such finding.

"3rd. The Court erred in not finding for the defendants, "and not entering judgment in their favor."

What could be more ridiculous than for this court to be sitting as a jury or appellate arbitrators, sifting and weighing the testimony for the purpose of finding the ultimate facts and then deciding the non-federal question whether the above depositions were properly admitted or not, but the court has as good a right to decide the non-federal question as it has to act as a jury. I think that is a good proposition.

The defendants have nobody to blame but themselves. They acquiesed in the decision of the Judge at *nisi prius*. If they intended to review his decision, they should have requested (as the Statute provides) that he should find the ultimate facts; and nothing of the kind appears in the record.

The assignment of errors above set out are the errors assigned in the Supreme Court of Iowa. I tried by correspondence to induce plaintiffs in error to assign errors in this Court, but without avail. I presume they intend to assign errors in this Court at the last moment before they adress the jury or appellate arbitrators. I do not intend to bore the court with a speech and shall probably not see their assignment of errors. If the case was one of any difficulty in this court I might insist on seeing their errors.

II.

The parties both claim title under the same acts. Congress granted in fee to the State of Iowa, May 15th, 1856, 11 Statutes at Large, page 9, certain lands including those in dispute. The State granted the same lands to the State of Iowa July 14th, 1856, to the Iowa Central Air Line Railroad Company. Which Company mortgaged the lands to secure certain scrip and construction bonds; which mortgage provided that the bonds and scrip might

be used in payment for lands. Courtright and his partners took a contract for doing certain grading and other work on the road, and after doing a considerable portion thereof was compelled to receive scrip and bonds in payment for the work done, and with these he paid for the land in dispute and got deeds for the same, which deeds will be found in the record, pages 24 and 25; this was in November, 1858, and the only question is whether the company had any right to convey any lands to Courtright at that time; it is admitted that no portion of the railroad was completed at that time.

The fourth section of the act of Congress making the grant is as follows: "And be it futher enacted: That "the lands hereby granted to said State shall be dis- "posed of by said State only in manner following, that "is to say: That a quantity of land not exceeding one "hundred and twenty sections for each of said roads, and "included within a continuous length of twenty miles of "each of said roads, may be sold, and when the governor "of said State shall certify to the Secretary of the Inte- "rior that any twenty continuous miles of any of said "road is completed, then another quantity of land hereby "granted, not to exceed one hundred and twenty sections "for each of said roads having twenty continuous miles "completed as aforesaid, and included within a continuous "length of twenty miles of each of said roads. may be "sold, and so, from time to time, until said roads are "completed, and if any of said roads are not completed "within ten years no further sale shall be made, and the "lands unsold shall revert to the United States."

An act amendatory to the above land grant act was passed by congress, June 2nd, 1874. See 13 Statutes at Large, page 99. On page 98 will be found the following proviso:

"Provided further, that nothing in this act shall be con- "strued to interfere with, or in any manner impair any "rights acquired by any railroad company named in the "act to which this is an amendment, or the rights of any "incorporation, person or persons, acquired through any

"such company; nor shall it be construed to impair any "vested right of property, but such rights are hereby re- "served and confirmed." These acts were relied upon by the plaintiff, and the Supreme Court of Iowa sustained the title thus claimed. The opinion of Beck, Chief Justice, will be found on page 34 of the record. Now the real question of dispute is, whether the court was right in awarding the title to the plaintiff. First, we claim that the 4th section of the first act of congress above quoted of itself, without any reference to the other gives ample authority for the conveyance of one hundred and twenty sections as a capital to begin business with, and it is the second one hundred and twenty sections which is to be conveyed when the governor shall certify to the completion of twenty miles of road.

This is the plain language of the act and it should be carefully considered by the court. On the contrary it is claimed that no lands at all can be sold until twenty miles of road shall be completed. Then why does the act recite that a quantity not exceeding one hundred and twenty sections may be sold, and that another quantity may be sold when the governor certifies? But the subsequent proviso in the act of June the 2d, 1864, reserves and confirms these lands, and if there could be a doubt about the true construction of the fourth section, that doubt would be removed by the subsequent confirmatory act. The title would not date from June 2d, 1864, even though the 4th section of the original act did not of itself warrant the conveyance, but the subsequent act would relate back so as to confirm the title from the beginning.

In the case of Steinback vs Steward, 11th, Wallace, page 574, Justice Strong, in delivering the opinion of the Court, says: "But when afterwards the District Court confirmed "the land to him, the confirmation enured to the "benefit of his prior grantee. It was not "the acquisition of a new title, but the establishment of his "original right. And this was expressly decreed by the "provisio already quoted. By that it was adjudged that "the confirmation should enure to the benefit of any per-

"son or persons who owned, or were entitled to the land "by any title in law or in equity, derived from the ori- "ginal grantee by deed, devise, decent, or otherwise. If, "therefore, Hoeppener or his grantees held any such title, "it was confirmed to them as truly as if he or they had "been petitioners for such confirmation. Now, it is in "virtue of this decree of the District Court that the "plaintiff claims. He has no standing without it. As- "serting his rights through it, the law will not permit "him to repudiate any part of its provisions."

The case of Wilkenson vs. Leland, 2 Peters, 627, is a strong case in point to the effect that a subsequent legislative confirmation will be valid. The court in that case says: "The only question there is, is what is the intent of "the Legislature in the act of 1792? Is it merely to con- "firm a void act so as to leave it void, that is, to confirm it "in its infirmity, or is it to give general validity and effi- "cacy to the thing done? We think there is no reasonable "doubt of its real object and intent. It is to confirm the "sale made by the executrix, so as to pass the title of her "testator to the purchasers." Let us apply the above doctrine to the present case. What do the terms "reserved and confirmed," in the proviso of the act of Congress mean? Viewing the case in the light of surrounding facts, among which were the deeds of Courtright and others, showing their purchase from the Iowa Central Air Line Railroad; we suppose that Congress intended that the land should be reserved and confirmed to the purchasers. The words in the foregoing opinion from 2nd Peters were ratify and confirm. These words were held to be sufficient to make a void deed valid, and to establish the purchaser in their title. In view of the facts in this case, we think the words "reserved and confirmed" should have the effect to make the title and deeds of Courtright valid." It is true that Courtright's deeds were not previously void, and perhaps his title was not quite perfect. Whatever it lacked of being a perfectly valid title was added by the reservation and confirmation contained in the proviso.

These acts of Congress were private acts in the nature of private contracts. Let us look a little at the surrounding circumstances. The lands had been conveyed to Courtright, I mean the lands in dispute, a conveyance had also been made to sundry other parties for a like consideration, the Legislature of Iowa had undertaken to resume the entire grant including those conveyed, and had conferred them upon the Cedar Rapids and Missouri River Railroad Company, each party claimed the lands. There was an evident conflict, the Railroad Company were not quite sure that their title was perfect, the lands had been conferred upon them to build the west end of the road from Cedar Rapids to the Missouri river, whereas the act of congress making the original grant required the road to be built from Lyons City, thence in a northwesterly direction to Maquoketa, and the east end of the road left out by the act of the legislature from Lyons via. Maquoketa was about one hundred miles in length, and as there were several other ugly circumstances connected with the grant that might render the title of the railroad company precarious, that company, by their president, L. B. Crocker, applied to congress for an enabling act, which would place them squarely in the shoes of the Iowa Central Air Line Railroad Company, and relieve the State from the obligation of the trust. Courtright, the plaintiff in this action, and the other parties in interest, appeared and made objection to the act unless their rights should be reserved and confirmed. See testimony of Allison, Record, Page 26. The result was a compromise. The proviso in the act of June the 2d was inserted in the act reserving and confirming the lands. The Cedar Rapids and Missouri River Railroad Company got by that act indemnity lands to the amount of 342,406.68 acres. See stipulation on page 29, record. But as to these lands claimed by Courtright and others, they, the defendants below, did not get them because they were reserved; a thing that is reserved is kept back. But as to these lands which are not reserved, they passed to the railroad company.

Courtright and others may just as well repudiate that

settlement and come in and claim the lands that were conferred upon the Railroads Company as for them to come in and claim the lands that were reserved and confirmed to him; were he to do so he would manifest impudence and brass unequaled in the history of jurisprudence.

But a great railroad corporation, with them it is different; they look upon it as a piece of smartness to repudiate their own settlement and grasp the lands that belong to private individuals. They accepted the act, it is true, by which they got over three hundred thousand acres of additional lands; they take the benefit with a good grace, but they repudiate the obligation of the proviso.

Their motto is "that individuals have no rights that they are bound to respect;" a powerful corporation indeed; and it remains to be seen in the future whether their pretentions are well founded or not. Courtright is only one of the class of individuals whose rights were reserved and confirmed. We hope that nothing will be said or done in this case which will in any manner prejudice the absentees; this suit is brought as a test case. If Courtright has no rights that a corporation is bound to respect, then probably no other party has.

In the case of Friedman vs. Goodwin, 1 McCalister's R. 142, the Circuit Court of the United States for the District of California, decided a case quite similar to this. Certain void leases had been made, the land was subsequently granted "except that any estate held by virtue of any "lease or leases, executed or confirmed &c." It was objected that the void leases created no estate, and that nothing in fact was confirmed but the court thought and decid otherwise.

It was also objected that parol evidence could not be admitted to explain an act, but the court on page 150 say: "Again, parol evidence, though inadmissible to vary or "contradict the terms of a deed, is competent to show the "situation of a party in relation to things and parties "around him; thus, if the language of a written instru- "ment is applicable to several persons, parol evidence is "admissible of any intrinsic circumstance to show what

"person or persons were intended. (1 Greenleaf on Er. "288.) In the interpretation of a grant another rule pre- "vails. Where a grant made by Government in general "terms *refers to a certainty*, it is the same as if such cer- "tainty had been expressed in the grant, though it be not "matter of record, but lie in averment, by matter in *pias* "or in fact."

By reference to the testimony of Allison and the deeds of Courtright the confirming proviso is applied to the subject matter, within the familiar rule of law, "that it is "sufficiently certain which can be made certain." Thus in the case of Owen vs. Thomas, 3d Mylne and Keen, page 353, (10 English Chancery, 353,) the plaintiff agreed with Thomas for the purchase of a house "for the price of a "thousand guineas. As soon as the agreement was con- "cluded the plaintiff, by the direction of the defendant, "wrote and sent by post to Mr. Church, the defendant's "solicitor, the following letter, to which the defendant, "having previously read it over, affixed his signature."

"*To Samuel Church, Esq., Brecon.—Aber.*

"7TH OF FEBRUARY, 1828.

"DEAR SIR:—I have this day sold the house, etc., in "Newport to Mr. John Owen, for 1,000 guineas, and I am "to receive the next half year's rent; the money to be paid "as soon as the deeds can be had from Mr. Deere; and "you will be pleased to lose no time in getting them from "him. I am, etc.,

"ROWLAND THOMAS."

The action in that case was for specific performance. The master of the rolls said: "This letter from Rowland "Thomas to his solicitor was written to apprise him of "the agreement into which he had entered with the plain- "tiff, in order that the solicitor might take the necessary "measures to carry it into execution, and is a sufficient "memorandum or note of the agreement in writing within "the Statute of Frauds. It is true that the agreement "must be certain in its terms; but *id certum est quod cer-* "*tum reddi potest.* It appears upon the face of the agree- "ment that the house referred to is the house of which the "deeds were in the possession of Mr. Deere, and the house

"might easily be ascertained before the master. The de-
"fendant, however, having declined the inquiry, in effect
"admits that any uncertainty as to the subject of the
"agreement would be thereby removed, and the plaintiff
"is therefore entitled to the decree which he asks." I will refer the court to an extract from 2d Parsons on Contracts, 5th Edition, Page 549: "If the agreement be, that
"one party shall convey to the other, for a certain price,
"a certain parcel of land, it is only by extrinsic evidence
"that the persons can be identified who claim or are al-
"leged to be parties, and that the parcel of land can be
"ascertained. It may be described by bounds, but the
"question then comes, where are the streets, or roads, or
"neighbors, or monuments, referred to in the description?
"And it may sometimes happen that much evidence is nec-
"essary to identify these persons or things. Hence we may
"say, as the general rule, that as to the *parties* or the *sub-*
"*ject-matter* of a contract, extrinsic evidence may and
"must be received and used to make certain, if necessary
"for that purpose."

It is contended that the road should have been commenced at Lyons, at the east end and built westwardly, taking lands for each installment as the road progressed. It is true that by the original act of Congress the road should have been built from Lyons via Maquoketa, but the subsequent amendment relieved the State and all parties of that obligation. It is also contended that the words "that a quantity of land not to exceed one hundred "and twenty sections" contained in the fourth section must be construed to mean the first hundred and twenty sections off the east end of the grant. If that was the intention of Congress I think they would have said so. The words "a quantity not to exceed," &c., contain only one limitation, and that is it shall not exceed one hundred and twenty sections. As I understand it, that quantity may be taken anywhere within a continuous twenty miles of the projected road. Be that as it may, the subsequent act of Congress of June the 2d, 1864, closed the controversy on that point, and made the title of Courtright

"person or persons were intended. (1 Greenleaf on Er. "288.) In the interpretation of a grant another rule pre- "vails. Where a grant made by Government in general "terms *refers to a certainty*, it is the same as if such cer- "tainty had been expressed in the grant, though it be not "matter of record, but lie in averment, by matter in *pias* "or in fact."

By reference to the testimony of Allison and the deeds of Courtright the confirming proviso is applied to the subject matter, within the familiar rule of law, "that it is "sufficiently certain which can be made certain." Thus in the case of Owen vs. Thomas, 3d Mylne and Keen, page 353, (10 English Chancery, 353,) the plaintiff agreed with Thomas for the purchase of a house "for the price of a "thousand guineas. As soon as the agreement was con- "cluded the plaintiff, by the direction of the defendant, "wrote and sent by post to Mr. Church, the defendant's "solicitor, the following letter, to which the defendant, "having previously read it over, affixed his signature."

"*To Samuel Church, Esq., Brecon.—Aber.*

"7TH OF FEBRUARY, 1828.

"DEAR SIR:—I have this day sold the house, etc., in "Newport to Mr. John Owen, for 1,000 guineas, and I am "to receive the next half year's rent; the money to be paid "as soon as the deeds can be had from Mr. Deere; and "you will be pleased to lose no time in getting them from "him. I am, etc.,

"ROWLAND THOMAS."

The action in that case was for specific performance. The master of the rolls said: "This letter from Rowland "Thomas to his solicitor was written to apprise him of "the agreement into which he had entered with the plain- "tiff, in order that the solicitor might take the necessary "measures to carry it into execution, and is a sufficient "memorandum or note of the agreement in writing within "the Statute of Frauds. It is true that the agreement "must be certain in its terms; but *id certum est quod cer-* "*tum reddi potest.* It appears upon the face of the agree- "ment that the house referred to is the house of which the "deeds were in the possession of Mr. Deere, and the house

"might easily be ascertained before the master. The de-
"fendant, however, having declined the inquiry, in effect
"admits that any uncertainty as to the subject of the
"agreement would be thereby removed, and the plaintiff
"is therefore entitled to the decree which he asks." I will refer the court to an extract from 2d Parsons on Contracts, 5th Edition, Page 549: "If the agreement be, that
"one party shall convey to the other, for a certain price,
"a certain parcel of land, it is only by extrinsic evidence
"that the persons can be identified who claim or are al-
"leged to be parties, and that the parcel of land can be
"ascertained. It may be described by bounds, but the
"question then comes, where are the streets, or roads, or
"neighbors, or monuments, referred to in the description?
"And it may sometimes happen that much evidence is nec-
"essary to identify these persons or things. Hence we may
"say, as the general rule, that as to the *parties* or the *sub-*
"*ject-matter* of a contract, extrinsic evidence may and
"must be received and used to make certain, if necessary
"for that purpose."

It is contended that the road should have been commenced at Lyons, at the east end and built westwardly, taking lands for each installment as the road progressed. It is true that by the original act of Congress the road should have been built from Lyons via Maquoketa, but the subsequent amendment relieved the State and all parties of that obligation. It is also contended that the words "that a quantity of land not to exceed one hundred "and twenty sections" contained in the fourth section must be construed to mean the first hundred and twenty sections off the east end of the grant. If that was the intention of Congress I think they would have said so. The words "a quantity not to exceed," &c., contain only one limitation, and that is it shall not exceed one hundred and twenty sections. As I understand it, that quantity may be taken anywhere within a continuous twenty miles of the projected road. Be that as it may, the subsequent act of Congress of June the 2d, 1864, closed the controversy on that point, and made the title of Courtright

valid. This latter act was procured for the benefit of the plaintiffs in error. They have accepted it and must abide by it entire including the proviso.

All arguments to the effect that something was not done before the passage of that curative proviso are put to rest by it. I say let it rest; let the parties abide by their contract made before and sanctioned by the highest tribunal in the nation, let there be no repudiation. When a western city or county come before this court and ask that their bonds may be repudiated, this court invariably holds them to the obligation of their contracts; this is only another form of corporation seeking to repudiate. The same reasoning applies to each case. Good faith and the obligation of contracts must be enforced, even against rich and powerful corporations.

It is also argued that the Courts of Iowa have decided against the validity of the resumption act, otherwise the court could not have found for the plaintiff. It may be that the dignity of the legislature of Iowa was imposed upon. Grant it; can this court reverse the case because an act of State legislation was held invalid and contrary to the constitution of the United States? If the case presented the converse of the above proposition, then this court would have jurisdiction under the twenty-fifth section of the judiciary act. But as the case now stands the decision of the highest court in Iowa must be final.

PLATT SMITH,
Attorney for Courtright.

Since writing the above brief I have received from the clerk of this court a copy of the brief of counsel for the plaintiff's in error. This accounts for the manner in which a portion of this brief is written.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1874.

No. 159.

THE CEDAR RAPIDS AND MISSOURI RIVER RAILROAD, AND THE IOWA RAILROAD LAND COMPANY, PLAINTIFFS IN ERROR,

VS.

MILTON COURTRIGHT, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

Statement of Case, Assignment of Errors, and Brief of Argument of Plaintiffs in Error.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

STATEMENT OF CASE.

This case was tried in the State Court on an agreed statement of facts which will be found in the record from about the middle of the 2d page to the 4th, and an additional stipulation appearing on the 29th page.

It was agreed that the statutes of the United States, and of the State of Iowa, through which the respective parties claim to derive title should be read in evidence from the statute books; and for the convenience of the Court, we here copy the act of Congress of May 15, 1856, by which the lands in controversy were granted,

and through which both parties claim title; and the acts of the General Assembly of the State of Iowa, of July 14, 1856; of March 17, 1860, and of March 26, 1860, which are mentioned in the record.

(11 STAT. AT LARGE, 9.)

AN ACT making a Grant of Lands to the State of Iowa, in alternate Sections to aid in the construction of certain Railroads in said State.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be and is hereby granted to the State of Iowa, for the purpose of aiding in the construction of railroads from Burlington, on the Mississippi river, to a point on the Missouri river near the mouth of the Platte river; from the city of Davenport, via Iowa City and Fort Des Moines, to Council Bluffs; from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad, near Maquoketa, thence on said main line, running as near as practicable to the forty-second parallel across the said State to the Missouri river; from the city of Dubuque to a point on the Missouri river near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, to be completed as soon as the main road is completed to that point, every alternate section of land, designated by odd numbers, for six sections in width on each side of each of said roads. But in case it shall appear that the United States have, when the lines or routes of said roads are definitely fixed, sold any sections, or any parts thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents, to be appointed by the Governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections, or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre emption have attached as aforesaid; which lands (thus selected in lieu of those sold, and [to] which pre-emption rights have attached, as aforesaid, together with the sections, and parts of sections, designated by odd numbers as aforesaid, and appropriated as aforesaid) shall be held by the State of Iowa, for the use and purpose aforesaid: *Provided*, That the land to be so located shall, in no case, be further than fifteen miles from the lines of said roads, and selected for and on account of each of said roads: *Provided further*, That the lands hereby granted for and on account of said roads severally shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever: *And provided further*, That any and all lands heretofore reserved to the United States, by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be and the same are hereby reserved to the United States from the operation of this act, except so far as it may be found necessary to locate the routes of said railroads through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. *And be it further enacted*, That the sections and parts of sections

of land which, by such grant, shall remain to the United States within six miles on each side of said roads, shall not be sold for less than double the minimum price of public lands when sold; nor shall any of said lands become subject to private entry until the same have been first offered at public sale at the increased price.

SEC. 3. *And be it further enacted*, That the said lands hereby granted to the said State shall be subject to the disposal of the legislature thereof, for the purposes aforesaid, and no other; and the said railroads shall be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States.

SEC 4. *And be it further enacted*, That the lands hereby granted to said State shall be disposed of by said State only in manner following: that is to say, that a quantity of land not exceeding one hundred and twenty sections for each of said roads, and included within a continuous length of twenty miles of each of said roads, may be sold; and when the Governor of said State shall certify to the Secretary of the Interior that any twenty continuous miles of any of said roads is completed, then another quantity of land hereby granted, not to exceed one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid, and included within a continuous length of twenty miles of each of such roads, may be sold, and so from time to time until said roads are completed; and if any of said roads are not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.

SEC. 5. *And be it further enacted*, That the United States mail shall be transported over said roads, under the direction of the Post-Office Department, at such price as Congress may by law direct; *Provided*, That until such price is fixed by law, the Postmaster-General shall have the power to determine the same.

APPROVED, May 15, 1856.

(LAWS OF IOWA, 1856, P. 1.)

AN ACT to accept of the grant and carry into execution the trust conferred upon the State of Iowa, by an act of Congress entitled, "An act making a Grant of Lands to the State of Iowa in alternate sections, to aid in the construction of Railroads in said State," approved May 15, 1856.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, That the lands, rights, powers and privileges, granted to and conferred upon, the State of Iowa, by the act of Congress entitled "an act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of Railroads, in said State, approved May 15th, 1856," be and the same are hereby accepted upon the terms, conditions and restrictions, contained in said act of Congress.

SEC. 2. That so much of the lands, interest, rights, powers and privileges, as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Burlington on the Mississippi river to a point on Missouri, near the mouth of Platte river, are hereby disposed of, granted and conferred upon the Burlington and Missouri River Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 3. That so much of the lands, interest, rights, powers and privileges, as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Davenport via. Iowa City and Ft. Des Moines to Council Bluffs, are hereby disposed of, granted and conferred to and upon the Mississippi and Missouri Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 4. That so much of the lands, interest, rights, powers and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad near Maquoketa, thence on said main line, running as near as practicable to the forty-second parallel, across the said State to the Missouri river, are hereby disposed of, granted and conferred to and upon the Iowa Central Air Line Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 5. That so much of the lands, interest, rights, powers and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a railroad from the city of Dubuque to a point on the Missouri river at or near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, to be completed as soon as the main line is completed to that point, are hereby disposed of, granted and conferred to and upon the Dubuque and Pacific Railroad Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 6. The lines and routes of the several roads above described shall be definitely fixed and located on or before the first day of April next, after the passage of this act, and maps or plots, showing such lines and routes, shall be filed in the office of the Governor of the State of Iowa, and also in the office of the Secretary of State of the State of Iowa. It shall be the duty of the Governor, after affixing his official signature, to file such map in the Department having the control of the public land in Washington; such location being considered final only so far as to fix the limit and boundary within which lands may be selected; and if it shall appear that the lands that have been donated by the act of Congress aforesaid, for the construction of the several lines above indicated, cannot be obtained by said Companies within the limits and along any part of the line aforesaid, the Governor shall from time to time appoint agents to make such selections as may be authorized or granted by Congress for the lines aforesaid; but the compensation of such agents and the costs, expenses and charges attendant upon and occasioned by making such selections, shall be fixed, regulated, paid and borne by each of said Railroad Companies respectively, upon and for its own line.

SEC. 7. The Iowa Central Air Line Railroad Company shall furnish, equip and operate the branch of their Railroad that will be constructed under this grant from Lyons City to the point of intersection with the main line of their road near Maquoketa, in the same manner with their main line from the west, and as completely as though the same was a continuation of said main line, and shall never give any preference to the main line of said road, or any part thereof, as defined in their articles of incorporation, by business arrangements, tariff of prices, or otherwise, over the said branch to their railroad.

SEC. 8. The grants aforesaid are made to each of said Companies respectively, upon the express condition, that in case either of such Railroad Companies shall fail to have completed and equipped seventy-five miles of its road within three years from the first day of December next, thirty miles in addition in each year thereafter, for five years, and the remainder of their whole line of road in one year thereafter, or on the first of December, A. D., 1865, then and in that case it shall be competent for the State of Iowa to resume all rights conferred by this act upon the company so failing, and to resume all rights to the lands hereby granted and remaining undisposed of by the company so failing to have the length of road completed in manner and time as aforesaid.

SEC. 9. The Roads aforesaid shall be constructed upon a gauge within a width of four feet, eight and one-half inches, and the iron used in the track shall be of approved quality and pattern, and the said roads shall be completed and finished in a style and of a quality equal to the average of other first-class western roads, and when the roads, or any of them, authorized to be constructed by this act, shall be intersected by the roads of any other Railroad Company now constructed, or hereafter to be constructed, it shall be the duty of such road or roads, receiving the benefit of this act, to furnish all proper and reasonable facilities and to join such other company in making all necessary crossings, turnouts, sidelings and switches, and other conveniences necessary for the transportation of all freight and passengers over either or any road or roads hereby mutually accommodated, whether said passengers or freight are brought by the roads benefitted by this act, or any other road or roads now constructed, or which may hereafter be constructed, and at such rates as shall not in any case exceed the regular tariff of charges on such road or roads.

SEC. 10. All persons, who at the time said grant was made, held valid claims by actual occupation and improvement upon any of the lands embraced in said grant, shall be protected in the same, and entitled to purchase and enter the same upon the terms and conditions hereinafter provided.

SEC. 11. Any person wishing to avail himself of the provisions of this act, shall within three months of the passage thereof, file his application for that purpose with the Judge of the county where such lands may be situated, and shall prove to the satisfaction of said Judge that his claim is valid, and that the same existed at the time said grant was made; and upon such proof being made, such Judge shall give to the applicant a certificate of the fact, and such certificate shall entitle the holder or his bona fide assignee to enter such land at the rate of two dollars and fifty cents per acre; *Provided*, that no person, claimant, or the assignee of a claim, shall be entitled to more than one hundred and sixty acres of land under this act: *And provided further*, That the person asserting a claim, whether as claimant or assignee, shall file his affidavit that he has not either directly or indirectly received the benefits of the provisions of this act. Before any rights shall be acquired under such certificate, a copy of the same together with the evidence shall be served on the secretary of the company interested, and such company shall have the right to appeal from the decision of such Judge to the District Court, in the same manner as appeals are taken from the decisions of Justices of the Peace at any time within ninety days after the service of such papers, and the same shall be tried as other

appeal cases, and an appeal may be taken to the Supreme Court by either party, in the same manner as appeals in other cases.

SEC. 12. Such certificate on being filed with the secretary of the company upon whose line of road such lands may be situated when no appeal has been taken as herein provided, shall entitle the holder or his assignee to the possession of said land, until the title shall become vested in the company; upon the payment thereafter to the Treasurer of the Company for said land at the price above designated, such person shall receive from the Secretary of the Company a patent to such land, not exceeding in quantity one hundred and sixty acres. Such deed or patent shall vest in the purchaser all the title of said company in and to such lands, except so far as to reserve to the company all such right of way and station grounds as may be actually necessary for the uses of the company.

SEC. 13. The said companies shall each severally assent to and accept the provisions of this act, by a written instrument, under the seal of such corporation, with the signatures of the proper officers, within ninety days after the passage of this act, which said acceptance shall be filed in the office of the Secretary of State, and be by the Secretary recorded in the book by him kept for recording of articles of association.

SEC. 14. Said Railroad Companies, accepting the provisions of this act, shall at all times be subject to such rules and regulations as may from time to time be enacted and provided for by the General Assembly of Iowa, not inconsistent with the provisions of this act, and the act of Congress making the grant.

SEC. 15. It shall be the duty of the companies receiving the benefits of this act, to make a regular annual report of their proceedings at the usual time and place of electing their officers, exhibiting a detailed statement, as far as practicable, of the amount of their expenditures, liabilities, &c., a copy of which shall be filed in the office of the Secretary of State.

SEC. 16. *Be it further enacted*, That any of said companies accepting the grants of lands under this act, shall take the same with the conditions imposed and incumbrances specified in this act, and shall in no event have any claim or recourse whatever upon the State of Iowa, for a misapplication of said grant, incumbrances or conditions of this act imposed.

SEC. 17. This act shall take effect and be in force from and after its publication in the Iowa Capital Reporter, and Iowa City Republican.

APPROVED, July 14th, 1856.

I certify that the foregoing act was published in the Iowa Capital Reporter and Iowa City Republican on the 16th day of July, 1856.

GEO. W. MCCLEARY,
Secretary of State.

(LAWS OF IOWA, P. 29.)

AN ACT to resume all rights conferred on the Iowa Central Air Line Railroad Company by an act approved July 14th, 1856, and to repeal certain laws in relation thereto.

WHEREAS, By the act of Congress approved May 15th, 1856, there were granted to the State of Iowa certain lands to aid in the construction of certain railroads in said State, upon certain terms, conditions and restrictions under which said lands might be disposed of; and

WHEREAS, The General Assembly of the State of Iowa, by an act approv-

ed July 13th, 1856, accepted said grant of land upon the terms, conditions and restrictions contained in said act of Congress, and contracted with the Iowa Central Air Line Railroad Company for the sale upon certain terms of that portion of said lands granted by said act of Congress, to aid in the construction of a railroad from Lyons City, northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad near Maquoketa, thence on said main line running as near as practicable to the forty-second parallel across the said State to the Missouri River; in consideration of the undertaking on the part of said Company, and subject to the conditions and restrictions contained in said act, and the act of Congress aforesaid; and

WHEREAS, The said Iowa Central Air Line Railroad Company has wholly failed to perform on their part, the conditions of said acts, and has utterly failed to construct any part of said Railroad as required by law, and by the terms of their contract; and has failed to complete and equip any portion of said road, thereby at the option of said State, annulling all their rights to the lands and privileges, under and by virtue of said acts by reason whereof the State of Iowa has the right to resume all said rights and privileges and all the rights in relation to said lands so as aforesaid conferred upon said Company by said State; and

WHEREAS, No part of said lands have been actually conveyed by this State to said Company, nor by said Company disposed of pursuant to the provisions of said acts; and inasmuch as the interest of the State in said lands and the construction of the road to aid which said lands were granted by Congress, as also the good faith of the State in executing the trust confided to it by Congress, require that the State should resume said rights and privileges, and all rights to the lands aforesaid. Now, therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, That all rights to the lands, interests, rights, powers and privileges heretofore conferred or intended to be upon the Iowa Central Air Line Railroad Company, by an act approved July 14th, 1856, entitled "an act to accept of the grant and carry into execution the trust conferred upon the State of Iowa by an act of Congress entitled 'an act making a grant of lands to the State of Iowa in alternate sections to aid in the construction of certain Railroads in said State, approved May 15th, 1856,'" be and the same are hereby absolutely and entirely resumed by the State.

SEC. 2. The fourth section of said act approved July 14th, 1856, and all other acts and parts of acts inconsistent with this act are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its publication in the Daily Iowa State Register and Daily Iowa State Journal, published at the city of Des Moines.

APPROVED March 17th, 1860.

I hereby certify that the foregoing act was published in the Daily Iowa State Register, March 21st, 1860, and in the Daily Iowa State Journal March 22d, 1860.

ELIJAH SELLS, Secretary of State.

(LAWS OF IOWA, 1860, p. 40.)

AN ACT to carry into execution the trust conferred upon the State of Iowa, in respect to the lands granted by an act of Congress, approved May 15th, 1856, to aid in the construction of a Railroad from Lyons City, across the State of Iowa and near the forty-second parallel to the Missouri River.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, That so much of the lands, interests, rights, powers and privileges as have been or may be granted and conferred in pursuance of the act of Congress entitled "an act making a grant of lands in the State of Iowa in alternate sections, to aid in the construction of Railroads in said State, approved May 15th, 1856, to aid in the construction of a Railroad from Lyons City, north westerly to a point of intersection with the main line of the Iowa Central Air Line Railroad, near Maquoketa; thence on said main line running as near as practicable to the forty-second parallel across the State of Iowa to the Missouri river, are hereby disposed of, granted and conferred to and upon the Cedar Rapids and Missouri River Railroad Company, a body corporate, created and existing under the laws of the State of Iowa. *Provided*, however, that no portion of the grants of land provided for in this act shall be applied to the liquidation of any debt or obligation heretofore made or contracted by the said Cedar Rapids and Missouri River Railroad Company or of the Chicago, Iowa and Nebraska Railroad Company; *Provided*, further, that it is hereby declared to be the true intent and meaning of this act that the State of Iowa according to the conditions herein specified—conveys and grants to the Cedar Rapids and Missouri River Railroad Company, her right, title to and interest in the aforesaid lands, and nothing more; and in no event shall said Company have any claim or recourse against the State for any defect in title or conveyance of said lands.

SEC. 2. The grant by this act conferred upon said Company is made upon the express condition that in case said Company shall fail to have completed and equipped forty miles of its road along the route aforesaid, and west from some convenient point on the Cedar river, near the 42d parallel, within one year from the first day of December next, after the passage of this act, thirty miles in addition, each year thereafter, for two years, and the remainder of their whole line of road in two years thereafter, or by the first day of December, 1865, then and in that case it shall be competent for the State of Iowa to resume all rights conferred by this act upon said Company so failing, and to resume all rights to the lands hereby granted and remaining undisposed of to the Company so failing to have the length of road completed in manner and time as aforesaid.

SEC. 3. The provisions of the ninth, tenth, eleventh, twelfth, thirteenth, fourteenth and fifteenth sections of the first chapter of the laws of Iowa, passed at the Extra Session of the Fifth General Assembly, and approved July 14th, 1856, so far as the same are applicable to this Company under the provisions of this act, and the one hundred and eighty-second chapter of the laws of this State, enacted by the Sixth General Assembly, and approved January 28th, 1857; and the eighty-fifth chapter of the laws of this State, enacted by the Seventh General Assembly, and approved March 20th, 1858, so far as said enactments are not inconsistent with the provisions of this act, be and the same are hereby made applicable to this Company, receiving the benefits of the grant hereby conferred; and it is further provided, that said Railroad shall be and remain a public highway for the use of the Government of the United States, free from toll or other charge upon the

transportation of any property or troops of the United States: and if the said Company shall accept this grant upon the condition aforesaid, which acceptance shall appear by an express writing, under the seal of said corporation, with the signatures of its President and Secretary, and shall be filed in the office of the Secretary of the State of Iowa, within ninety days after the approval of this act by the Governor, it shall take the same with the conditions imposed, and incumbrances specified in this act; and shall in no event have any claim or recourse whatever upon the State of Iowa, for a misappliction of said grant, incumbrances or conditions in this act imposed.

SEC. 4. It is hereby provided, that said Cedar Rapids and Missouri River Railroad Company shall be entitled to the full amount of land authorized by said act of Congress, as the work progresses, for the first three sections of road, of twenty miles each, which shall be constructed by said Company; but thereafter as the work progresses, they shall be entitled to an equal pro rata apportionment of the lands remaining subject to appropriation in aid of this work, to be ascertained by a division of the quantity of lands so remaining by the number of whole sections of twenty miles each, extending from the point of construction then reached to the Missouri River.

SEC. 5. It is further expressly provided, that this act shall not be so construed as to give title to any portion of said lands to the Company, accepting the provisions hereof, otherwise than as the work progresses, and as provided in the act of Congress aforesaid, conferring the lands upon the State of Iowa, namely: When they shall have completed each section of twenty miles of road aforesaid, they shall be entitled to the amount of land apportioned thereto, and not before; and they shall not become entitled to the first one hundred and twenty sections authorized by act of Congress, until such first section of their road shall have been completed, at which time they shall become entitled to the first apportionment of land. Nor shall this act be so construed as in any manner to prevent the General Assembly of this State from resuming, upon failure of either of the conditions named in the second section of this act, all lands to which the said Company shall not have then become entitled by completion of one or more sections as aforesaid of the said road.

SEC. 6. And it is further expressly provided that said Company shall build or cause to be built before the first day of January, 1861, a railroad of like guage and equal in quality to the Chicago, Iowa and Nebraska Railroad from Pearl street, in Lyons City, to a point of intersection with the said Chicago, Iowa and Nebraska Railroad within the corporate limits of Clinton City, with such switches and side tracks as the business of said town of Lyons may require; and to operate or cause to be operated the same by running passenger and freight cars, of the same class with those used by by the Chicago, Iowa and Nebraska Railroad, in close connection forever with all regular trains at any time run on said Chicago, Iowa and Nebraska Railroad, without occasioning any unnecessary delay to freight or passengers at said point of intersection; and the charge per mile for transportation of freight or passengers shall never exceed the regular charges for like service on the Chicago, Iowa and Nebraska Railroad; the intent and meaning of this section being to secure to the citizens of Lyons the same privileges and benefits of a Railroad connection that are enjoyed by any other place on said Chicago, Iowa and Nebraska Railroad: and it is

hereby expressly provided that no lands shall be certified by the Governor to said Cedar Rapids and Missouri River Railway Company until they have complied with all the requirements of this section.

SEC. 7. Said Company shall not commence to build or construct said road, at any point further west from the Mississippi river than the town of Marion in Linn County, Iowa, and the Governor of the State shall not certify any of the lands herein transferred to said Company, until that portion of the Road between said town of Marion and the city of Cedar Rapids, together with so much more of said road as to make in the aggregate at least twenty miles, shall be completed, equipped and operated by said company or its successors.

SEC. 8. And be it further enacted that it shall be deemed a felony for the President and Directors or Managers of the said Railroad Company accepting the grant of land to be conveyed by this act to willfully misapply any of the land herein granted, to any other purpose than the carrying into effect the true meaning and intent of this act, and the President, Directors or Managers of said Railroad Company who may be guilty of any such willful misapplication of the lands herein granted shall be liable to a fine of not less than five thousand dollars, or imprisonment in the county jail not less than twelve months and not more than three years, or both such fine and imprisonment at the discretion of the court before whom any case may be tried.

SEC. 9. It is further expressly provided, that if said Cedar Rapids and Missouri River Railroad Company shall fail or refuse to accept of this grant upon the conditions hereby imposed, and in time and manner, as aforesaid, the Census Board of this State is hereby authorized, by proper writing with seal of State affixed thereto, to confer the same upon such party or company as shall in their judgment, be competent to carry out the enterprise hereinbefore provided for in good faith, and which shall accept the grant by a proper written instrument duly executed and attested, and shall file the same in the office of Secretary of this State, subject to all the preceding sections of this act, and the same shall in that case, be applicable to such grantee, subject to all the foregoing terms and conditions of this act as fully as if named and originated herein.

SEC. 10. This act shall take effect and be in force from and after its publication in the Iowa State Register and in the Iowa State Journal.

APPROVED March 26th, 1860.

I hereby certify that the foregoing act was published in the Iowa State Journal, April 7th, 1860, and in the Iowa State Register, April 11th, 1860.

ELIJAH SELLS,
Secretary of State.

From the agreed statement and the statutes, these facts appear:

By the act of May 15, 1856, Congress made a grant of lands to the State to aid in the construction of a line of railroad from "Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad, near Maquoketa, thence on said main line, running as near as practicable to the forty-second parallel, across the said State to the Missouri river."

The State of Iowa, by the act of its legislature of July 14th, 1856, accepted the grant "upon the terms, conditions and restrictions, contained in said act of Congress," and at the same time made a conditional grant of the lands to the Iowa Central Air Line Railroad Company, to aid that company in the construction of the proposed railroad. The Air Line Company accepted the grant upon the terms and with the conditions contained in the act of the legislature, and surveyed and located the line of railroad, and by its agent selected the vacant odd numbered sections lying outside of the six and within the fifteen mile limits of the grant. It also did some grading on the eastern part of the proposed line, mostly between Lyons and Maquoketa and none west of Anamosa. It completed no road at all, and in the spring of 1858 entirely abandoned the work. About the last of November in 1859, the trustees of the Air Line Company to whom that company had conveyed its interest in the whole grant, in trust, for the accomplishment of certain financial schemes, executed conveyances for the lands in controversy to the defendant in error. At about the same time, other lands were conveyed by the trustees, in all amounting to about 120 sections, and all in the western part of the State, in Monona and Woodbury counties.

The State statute required the company to have seventy-five miles of road completed by the first day of December, 1859. The Air Line Company having completed no road, and having abandoned the work nearly two years before, the legislature on the 17th of March, 1860, repealed so much of the act of 1856 as conferred any rights on the Air Line Company, and resumed to the State all rights conferred upon that company by the act of 1856.

Between the years 1856 and 1860 a road called the Chicago, Iowa and Nebraska Railroad had been built from Clinton to Cedar Rapids, a distance of about eighty-two miles. Clinton is on the Mississippi river, less than three miles south of Lyons City, mentioned in the act of Congress. Cedar Rapids is on the Cedar river near the 42d parallel of north latitude. The State having resumed the grant made to the Air Line Company, granted the

lands to the Cedar Rapids and Missouri River Railroad, one of the plaintiffs in error, upon condition that that company should construct the line of road prescribed by the act. The road to be built by the Cedar Rapids Company, was not the line throughout that was described in the act of Congress, because the line already constructed from Clinton to Cedar Rapids was to form a part of the line across the State. The Iowa act required the Cedar Rapids Company to build a road to connect Lyons City with the Chicago, Iowa and Nebraska Railroad at Clinton, and a line to extend across the State near the forty-second parallel to the Missouri river, beginning at some point near the Cedar river not farther west than the town of Marion, in Linn county. This was an abandonment of so much of the line contemplated in the act of Congress, as lay between Lyons and Marion, and an appropriation of the lands to aid in the construction of the road described in the act of the legislature. This appropoiation of the land, Congress, by its act of June 2, 1864, consented to and affirmed. (13 *Stat. at Large*, 96). In the 4th section of that act, Congress, after referring to the fact that the State had granted to the Cedar Rapids and Missouri River Railroad Company a portion of the lands granted to the State by the act of 1856, and providing for a modification of the uncompleted portion of the line and for connecting it by a branch with the Mississippi and Missouri Railroad, uses this language:

"And the said Cedar Rapids and Missouri River Railroad Company shall be entitled for such modified line to the same lands, and to the same amount of lands per mile, and for such connecting branch to the same amount of land per mile, as originally granted to aid in the construction of its main line," &c.

By an act approved on the 3rd of March, 1865, Congress extended the time for the completion of the Iowa land grant roads for two years, or until the 15th of May, 1868. (13 *Stat. at Large*, 528, *Sec.* 10.) It is agreed by the parties to this suit that the lands in controversy are a part of the lands granted to the State by the act of Congress of May 15th, 1856, and that they were certified to the State by the Secretary of the Interior on the 27th

of December, 1858. The lands were certified by the Secretary of the Interior under authority of the act of Congress of August 3, 1854. (10 *Stat. at Large*, 346.) It is admitted in the agreed statement that the Cedar Rapids and Missouri River Railroad Company completed by the 5th day of February, 1867, the road which it undertook to build. (*See Record, p.* 3.)

It is also agreed that the Governor of Iowa certified to the completion of the whole line of road. The first three sections of twenty miles each were certified by the Governor on the 31st of October, 1864, and the whole line to the Missouri river in June, 1867. (*See Record, p.* 4.) The certificates of the Governor mentioned in the agreed statement, and which are here referred to, are the certificates of the Governor of Iowa to the Secretary of the Interior required by the 4th Section of the act of Congress of May 15th, 1856. These certificates operated to make the title of the State indefeasible to so much land as was apportioned by the act of Congress to the completed and certified road; and they also operated to invest the Cedar Rapids and Missouri River Railroad Company with the title of the State to the same lands. It will be observed that the act of the legislature of March 26th, 1860, does not provide for patents or other formal conveyances from the State to the company building the road. It declares in effect that when the company shall construct the road it shall become the owner of the land; and that during the process of construction so fast as it shall complete the road in sections of twenty miles it shall become the owner of the lands apportioned to the completed sections.—The act of the legislature does not provide for any other evidence of the completion of the railroad than the certificate of the Governor to the Secretary, required by the act of Congress. It does not provide for any other act to be done than the making of this certificate, to invest the company with the title; and it contemplates that the completion of any sections of the road and the certifying of that fact by the Governor to the Secretary should invest the company with the absolute title to so much land as was apportioned to the completed sections.

It is not questioned by the defendant in error that the building of

the road and its certification by the Governor to the Secretary, invested the Cedar Rapids Company with the title to all the lands belonging to the road near the 42d parallel, to which the State had title when the act of March 26th, 1860, was passed. The claim of the defendant in error is, that the title to the lands in controversy passed to the Air Line Company, his grantor, by the act of the Legislature of July 14th, 1856, and for this reason did not pass to the Cedar Rapids Company by reason of the subsequent legislation and the construction of the railroad. This brings us to the question in controversy, which is, whether or not the Air Line Company did without completion of any part of the railroad acquire a title to the lands in dispute under the act of Congress of May 15th, 1856, and that of the General Assembly of the State of Iowa of July 14th, 1856. If the Air Line Company did so acquire title it is now in the defendant in error; if not, the title is in the Land Company, one of the plaintiffs in error.

It appears by the record that this action was originally brought by Courtright, the defendant in error, in the District Court of Iowa, for Linn county, to recover of the plaintiffs in error the lands described in his petition. (*See Record, p.* 1.) The action is in the form prescribed by Chapter 144 of the Iowa Revision of 1860, entitled "Actions for the recovery of Real Property." The statute declares:

SEC. 3570. The petition need but state generally, without stating the facts constituting the right, that the plaintiff is entitled to the possession of the premises, particularly describing them, also the quantity of his estate and the extent of his interest therein, and that the defendant unlawfully keeps him out of possession, and the damages, if any, which he claims for withholding the property; but if he claims other damages than rents and profits, he must state the facts constituting the cause thereof.

* * * * * * * * *

SEC. 3573. The answer of the defendant and of each, if more than one, must set forth what part of the land he claims, and what interest he claims therein, generally and without the facts constituting the right, and if a mere tenant the name and residence of his landlord, and need state nothing more than this.

* * * * * * * * * *

SEC. 3591. The plaintiff must recover on the strength of his own title.

It was under the statute from which these sections are quoted, that the action was begun and prosecuted. The answer of the

plaintiffs in error to the petition of the defendant in error (*See Record, p.* 2,) denies the title and right of possession of the said defendant in error, and asserts that the Land Company is the absolute owner in fee of the lands mentioned in the petition, and that it became such about the 15th of September, 1869, by conveyances from the other plaintiff in error, the Cedar Rapids and Missouri River Railroad Company. Both parties claim title under the same act of Congress—that of May 15th, 1856.

The Supreme Court of the State of Iowa found for the defendant in error, and embodied the following statement in its final judgment entry:

"In the decision of this case the act of Congress, approved May 15th, 1856, granting lands to the State of Iowa to aid in the construction of certain railroads in said State was construed, the Court holding that by virtue of said act the State of Iowa had power to grant to the Iowa Central Air Line Railroad Company one hundred and twenty sections of land in advance of the completion of any part of its railroad, and that the lands mentioned in the record were rightfully selected and sold by said Railroad Company, under the powers granted by said act of Congress of May 15th, 1856.—And the Court denied the opposite construction of said act, namely, that the Railroad Company could not acquire title to any lands excepting as the road should be built in sections of twenty miles each, and that the lands could only be selected beginning at the Mississippi river and thence west, as claimed by the defendant and appellant." (*Record, p.* 30.)

II.

ASSIGNMENT OF ERRORS.

The plaintiffs in error say that there is manifest error on the face of the record in this, to-wit:

1. The court erred in its construction of the act of Congress of

May 15th, 1856, in that it held that by virtue of said act the State of Iowa had power to grant to the Iowa Central Air Line Railroad Company one hundred and twenty sections of land in advance of the completion of any part of its road.

2. The court erred in deciding that the lands mentioned in the record were rightfully selected and sold by said railroad company, under the powers granted by said act of Congress of May 15th, 1856.

3. The court erred in denying the claim of the plaintiffs in error, namely, that the railroad company could not acquire title to any of said lands excepting as the road should be built in sections of twenty miles each.

4. The court erred in denying the claim of the plaintiffs in error that the lands could only be selected beginning at the Mississippi river and thence west.

5. The court erred in finding for the defendant in error and against the plaintiffs in error, and in entering judgment affirming the title of the defendant in error in accordance with such finding.

6. The court erred in not finding for the plaintiffs in error, and in not entering judgment in their favor.

ARGUMENT.

I.

Section 4 of the act of May 15th, 1856, provides how the lands granted by the 1st section may be disposed of by the State of Iowa. The first construction given to said section 4 of which we have any knowledge is found in a communication of the Commissioner of the General Land Office to L. B. Crocker, Esq., who became President of the Cedar Rapids and Missouri River Railroad Company, one of the plantiffs in error. The letter is as follows:

"GENERAL LAND OFFICE,
January 26th, 1857.

"*Sir:* In reply to your communication of the 8th inst., on the subject of the Railroad grant in Iowa, I have to state the 4th section of the act of Congress of May 15th, 1856, is as follows:

"'That the lands hereby granted to said State shall be disposed of by said State only in manner following: that is to say, that a quantity of land *not exceeding* one hundred and twenty sections for each of said roads, and included in a continuous length of twenty miles of each of said roads may be sold; and when the Governor of said State shall certify to the Secretary of the Interior that any twenty miles of any of said roads is completed, then another quantity of land hereby granted, not exceeding one hundred and twenty sections for each of said roads having twenty continuous miles completed as aforesaid, and included within a continuous length of each of said roads, may be sold, and so, from time to time, until said roads are completed; and if any of said roads are not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.'

"From this it is plain that the lands authorized to be sold must be included within a continuous length of twenty miles of the road, that is opposite such completed portion and that there is no authority given to sell lands opposite a section of twenty miles not yet completed, for any other twenty miles which may have been completed.

"Should there be two completed sections,—sections, making together forty miles of road,—the state or her assigns will be warranted in selling 240 sections, if that quantity is found within that limit, and so on in the same ratio, in regard to any number of completed sections of twenty miles each; the final certified lists of the department having the force of patents, conveying the full and completed title to such particular lands, may eventually be issued on this principles. Of course when the whole line of road is

completed according to law, all the land enuring under the grant will be conveyed to the State."

"I am, very respectfully,
Your obedient servant,
THOS. A. HENDRICKS."

Records, Gen'l Land Office, Railroad Record Vol. 1, No. 171, 172.

This was the construction given to the act of May 15th, 1856, by the Commissioner of the General Land Office, whose duty it was to execute the provisions of said act: for although the Secretary of the Interior is designated in the act as the officer charged with said duty, practically it devolved on the head of the land department.

The effect of this construction is this: That each section of twenty miles of road shall be entitled to receive all of the lands granted within the limits of the grant opposite to itself, not exceeding one hundred and twenty sections.

If this construction is correct, then the defendant in error has no title and the lands in dispute belong to the Iowa Railroad Land Company, one of the plaintiffs in error; for it is admitted that the section of the railroad for and on account of which these lands are claimed was the most easterly one—commencing at the Mississippi river—while the lands lie opposite the most westerly section, ending at the Missouri river.

The grant made by the act of May 15th, 1856, was to the State of Iowa, and the State could dispose of the lands embraced in it only in pursuance of the 4th section of the act: "for all grants of this description are strictly construed *against* the grantees; nothing passes but what is conveyed in clear and explicit language; and as the rights here claimed are derived from the act of Congress, the donation stands on the same footing as a grant by the public to a private company, the terms of which must be plainly expressed in the statute; and if not thus expressed, they cannot be implied."

Dubuque and Pacific Railroad Company v. Litchfield, 23 Howard, 88;
Charles River Bridge v. Warren Bridge, 11 Peters, 420;
Gilart v. Gladstone, 11 East., 685;
May, &c., v. Ohio and P. R. R. Co., 26 Penn. St., 355;
Sanford v. Martin, 13 Iowa, 67.

The construction given to the act of May 15th, 1856, by the Commissioner of the General Land Office is not only in harmony with this rule, but is the only one which insures, absolutely, an application of the proceeds arising from the sales of the lands opposite to each section of twenty miles of the line of railroad to the construction of the particular section to which such lands attach.

"If it be said that, on the end of the line of road where many of the public lands had already been sold by the United States, the State might not be able, under the above construction, to sell one hundred and twenty sections, the quantity of land intended to be applied in aid of the construction of each twenty miles of road, it is answered that this result is contemplated by the act when it says that 'a quantity of land *not exceeding* one hundred and twenty sections and included within a continuous length of twenty miles of the road may be sold,' &c., clearly requiring that in selling the land the State should in each sale be confined to such lands as should be obtained within a continuous length of twenty miles, though the quantity should be less than one hundred and twenty sections, under the various provisions of the act the quantity might be less, but it could not exceed that quantity.

"The provisions of the first section authorizing the selection of lands outside of the six-mile tiers in lieu of those sold by the Government within that limit, have reference to the filling up of the grant as near as may be, but has no reference to the manner of disposing of the same by the State, as the *work* progressed."

Miller, J., in Cedar Rapids and Mo. R. R. Co. *et al.*, not yet reported, but referred to by him in his dissent to opinion of the court in this case. Record, p. 41.

If one hundred and twenty sections of land subject to the grant could not be found "within a continuous length of twenty consecutive miles" commencing at Lyons on the Mississippi river, it was owing to the fact that the United States had sold large quantities of land in the eastern part of the State of Iowa at the date of the grant, occupied by a population more or less dense, ready to extend

to a railroad a liberal patronage and a large amount of business. Hence it was not necessary to rob the western section of the line of the land designed to aid in its construction in order to insure the completion of the eastern section. Population and business, both at hand, gave support and credit to the efforts made in behalf of the building of the latter; while the absence of both on the former demanded the application of the funds arising from the sale of the granted lands lying opposite to it to its construction. The land in controversy was granted to aid in the construction of a section of twenty miles of railroad in the western part of the State. It is claimed by a party who undertook to construct a section of twenty miles in the eastern part of the State, and who failed to construct any road. The claim seems a preposterous one.—Under any reasonable view of the act of May 15th, 1856, it cannot be allowed.

The lands granted by the act of May 15th, 1856, to the State of Iowa, stood in the character of a trust fund. The United States relied on the good faith of the State for the execution of the powers conferred on it by said act. This reliance on the good faith of the State did not enlarge its powers. It was to see to it that the lands granted were applied to the purpose for which the grant was made, and it could dispose of the lands only in manner and form authorized by the act. If in disposing of the lands to the Iowa Central Air Line Railroad Company it exceeded the power conferred by the act making the grant, no advantage could thereby accrue to said Railroad Company or to the defendant in error, its grantee; for the rights of all parties concerned depended upon the act of Congress, and not upon the legislative action of the State of Iowa. All parties were bound to know the law, and a mistake on the part of the State of Iowa, however well it may have intended, and however much parties may claim to have been misled thereby, cannot make the slightest difference in the result. A title bad under the said act of May 15th, 1856, cannot be made good by a mistake, even though it be committed by the assumed authority of a State.

II.

The act of May 15th, 1856, although a grant *in presenti*, gave the State only a conditional title to the lands, which was to revert to the United States upon a failure to build the roads; or if any part of the roads should be built and not the whole, a proportionate part of the lands were to revert.

That statutes granting lands, such as are involved in this case, are of the nature of contracts, and are in many respects to be treated as contracts, is a proposition which we do not seek to controvert. This proposition was clearly determined in Fletcher v. Peck, 6 Cranch, 87, and in many other cases. In the construction of statutes, (those in the nature of contracts as well as others,) it is a cardinal rule that where any doubt exists the intent of the Legislature, if it can be plainly perceived, ought to be pursued. It is also a rule that the whole law shall be taken together, and one part expounded by any other which may indicate the meaning annexed by the Legislature itself to ambiguous phrases.

Postmaster General v. Early, 12 Wheaton, 152.
Noble v. the State, 1 G. Greene, 330.

The act of Congress of May 15th, 1856, which granted lands to the State of Iowa, and not to any company, plainly intended to aid the State in the construction of railroads; completed roads or portions of roads, that could be used and operated as railroads, and not in mere abortive attempts at construction.

This idea is twice repeated in the first section; first in the granting clause, which states the purpose of the grant, and again in the second proviso, which declares that the lands shall be exclusively applied in the construction of the road for which they were granted. It is repeated in the third section, where it is declared that the lands shall be used "for the purposes aforesaid and no other." The fourth section emphasises the idea when it prescribes that the Governor of the State shall certify to the Secretary of the Interior that twenty continuous miles of road is completed,

before the State shall sell any land—certainly any beyond that which may be sold for the first section of twenty miles of road.—In the same section it is enacted that "if any of said roads are not completed in ten years, no further sales shall be made, and the lands unsold shall revert to the United States."

When "sales" are mentioned in this act, or any of the acts under consideration, of course legal sales are meant—sales made as prescribed by the law and for the purposes contemplated by it. No other sales can be valid or pass any title.

The intention, we think, is clear that the State should acquire no indefeasible title to any land at all, except upon the condition that at least twenty continuous miles of the road in aid of which the grant was made, should be built and certified. It is true that the title passed to the State, either by the force of the act alone, upon the location of the line of road by which the lands could be identified, or this, together with the certificates afterwards executed in the General Land Office. But the title so passed was a conditional one, liable to be defeated upon the happening of a condition subsequent. It was so held by the Supreme Court of Iowa in The State, *ex. rel.*, &c., vs. Kirkwood, Governor, 14 Iowa, 162.

Section four of the act declares, in effect, that if any part of the road should not be built within the time limited, a proportionate part of the land should revert to the United States. That section, as well as the other parts of the act, contemplates that some sections of road would be completed within that time. But we suppose the plain construction of the act would be that if no road at all had been completed within the time, that the whole grant would have reverted. This is clearly implied in the language we have quoted from section four, and in the reiterated statement that the lands should be used for the purpose of aiding in the construction of railroads, and no other. We therefore claim the true meaning of the act to be that the State could not convey an indefeasible title, until the road to which the lands applied had been built and certified. This conclusion seems to be irresistible from the language of the proviso of the first section, which declares that

the lands "shall be disposed of only as the work progresses," taken in connection with the fourth section, which defines progress as contemplated by the act, to-wit: twenty continuous miles of completed road. The proviso is a condition of the grant—a condition which defeats the grant if not complied with. Section four, which prescribes when lands may be sold and how much, prescribes a section of twenty continuous miles as the least degree of progress which gives the State the right to sell. This signifies that it is only progress in the work which vests an indefeasible title, and the degree of progress that will do so is defined. The work must be done before the right becomes perfect. If, therefore, the State had conveyed the lands in controversy, or any lands, before the first section of the road had been built and certified, the lands would have reverted upon a failure to build the road afterwards. And this view is in harmony with the construction given to the act by the Commissioner of the General Land Office, above cited.

III.

If it should be held that the State had an indefeasible title to so much land as defendant in error claims it was authorized by the act of May 15th, 1856 to sell before the first section of twenty miles should have been built and certified, it did not by the act of July 14, 1856, grant any indefeasible title to the Iowa Central Air Line Railroad Company, and had no power to do so, if it had so intended.

The land here referred to is that which relates to the first section of twenty miles of road. If under any view of the act making the grant the State could sell this land, and make an indefeasible title, it could only be done upon the good faith of the State that it would afterwards build the road. No other reason can be given, consistent with the object of the grant, for this hypothesis. There

are only two hypotheses consistent with the object of the grant.—The one is that the State could not pass an indefeasible title at all in advance of the completion of twenty miles of road; and the other is that if it did so it was upon the trust reposed by Congress in the good faith of the State that it would build the road afterwards. We have so far been inquiring what the State could do. We are now to determine what it did by the act of July 14, 1856, and the subsequent acts upon the same subject.

The first section of the act of July 14th accepts the grant made by Congress "upon the terms, conditions and restrictions contained in said act of Congress." The following sections to the fifth inclusive, contain the grant from the State to each company that was expected to build each road, to be aided by the grant. The fourth section contains the grant to the Iowa Central Air Line Railroad Company, the grantor of the defendant in error. It is in form a present grant of "so much of the lands, interests, rights, powers and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a Railroad from Lyons City northwesterly," &c. If this were all the act contained it would clearly be a present grant of every thing which the State acquired under the act of Congress in aid of that particular road, and which it was competent for the State to grant, and nothing more or less. If there were any rights given by the Act of Congress to the State, which depended for their existence upon the good faith of the State alone, there was clearly no intention to grant these in violation of good faith, because the first section declares that the act of Congress is accepted upon the *terms*, *conditions* and *restrictions* contained in said act. If, therefore, it should be held that under the act of Congress, the State might convey an indefeasible estate in so much land as might enure to it on account of the first twenty miles of road, this could only be allowed, as we have shown above, upon the undertaking on the part of the State to build so much road, and the pledge of its good faith to do so. If this right existed at all it was a personal trust resting on the good faith of the State. This right the State could not have transferred to the company had it been disposed to do so,

on the very plain, elementary principle that no one can delegate a trust personal to himself.

Section 1 Parsons' Conts., 71—77 and cases cited.

But the State, by the act of July 14th, 1856, not only did not attempt to transfer to the company the rights and powers which rested on the good faith of the State, but it did not grant the legal title which the State held in the lands, as held by the State. The State, as we have seen, held the present legal title to the lands, liable to be defeated and to revert to the United States, upon the happening of a condition subsequent. The act of the Legislature, although in the form of a present grant, is coupled with conditions which make it in effect but a contract that the title shall vest in the company upon the performance of the conditions precedent, prescribed by the act to be performed by the company.

The eighth section of the grant is this:

"The grants aforesaid are made to each of said companies, respectively, upon the express condition, that in case either of said railroad companies shall fail to have completed and equipped seventy-five miles of its road within three years from the first day of December next, thirty miles in addition in each year thereafter, for five years, and the remainder of their whole line of road in one year thereafter, or on the first of December, 1865; then and in that case, it shall be competent for the State of Iowa to resume all rights conferred by this act upon the company so failing, and to resume all rights to the lands hereby granted and remaining undisposed of by the company so failing to have the length of road completed in manner and time as aforesaid."

The 10th, 11th and 12th sections of the act secure the right of "persons, who at the time said grant was made, held valid claims by actual occupation and improvement upon any of the lands," to purchase the same of the companies at the rate of $2.50 an acre. A certificate is provided for which shall secure to the holder this

right. By section 12 it is enacted that such certificate "shall entitle the holder or his assignee to the possession of said land, until the title shall become vested in the company." That there might be no mistake as to the intention, section 16 exacts "that any of said companies accepting the grants of land under this act, shall take the same with the conditions imposed and incumbrances specified in this act."

In the case in 14 Iowa 162 already cited, the Supreme Court of Iowa held that the grant of the same lands to the Cedar Rapids and Missouri River Railroad (see Laws 1860, p. 40), was a grant with conditions precedent which must be performed by the company before any title vested. There is no substantial difference in this respect between the two grants.

The language above quoted from section 12, that the certificate shall entitle the claimant to the possession of the land "until the title shall become vested in the company," implies with all the force of a direct declaration that no title was intended to be vested in the company by the act alone. Something remained to be done to invest the company with the title. No act of investiture is named or hinted at, either in this act or in the act of Congress, except the certificate of the Governor, that a section of twenty miles of road is completed. No distinction is made in the act of the Legislature between the first 120 sections and the other part of the grant. None can be implied in favor of the company, for such grants in all cases of doubt are construed in favor of the State.

See Dubuque & Pacific R. R. Co., vs. Litchfield, 23 How., 66 and cases cited.

The language which we have quoted from section 12, which speaks of the title becoming vested in the future, proves clearly that the conditions annexed to the grant were conditions precedent. Section 8, which states certain express conditions on which the grants were made, attaches the conditions to all the lands, because none are excepted. The right reserved by that section to resume

the grant if seventy-five miles of road were not built by December 1st, 1859, as clearly reserves the right to resume if no road at all were built within that time as that the greater includes the less; the only difference in this case being, that if the company should become invested with the title to any of the lands, the resumption was not to operate upon them. This we suppose is what is meant by the right to resume all the lands remaining undisposed of by the company. Lands which the company might rightfully dispose of according to the terms of the grant. This act nowhere says that the company should be entitled to any land except upon the completion and equipment of some portion of railroad, and there is nothing in the act that necessarily implies that it should be so entitled, and unless the implications are necessary to carry out the object of the grant, it cannot be allowed. The implications of this statute are all the other way. The object was to secure a complete railroad, to be completed in sections of twenty miles. The act of Congress prescribes what shall be evidence of the completion of any given section and the implication is as strong as implication can be, that nothing but the completion of some road and procuring the prescribed evidence of it should vest a title in the company; and no 120 sections or any other portion of the grant is excepted.

The purpose of this act was to secure the completion of a railroad by sections of twenty miles by means of a grant of lands.—Knowing this purpose, the construction to be given to the act must be such as is best calculated to effect it.

"When we once know the reason, which alone determined the will of the law makers, we ought to interpret and apply the words used in a manner suitable and consonant to that reason, and as will be best calculated to effectuate the intent."

Smith's Com., 491.

There are are two sources of uncertainty in the act of July 14th. The fourth section of the act purports to grant and confer so much of the lands, interests, rights, powers and privileges as was granted

to the State by the act of Congress for this road. Just what the rights of the State were as to the first 120 sections is left doubtful by the act of Congress. We have argued, and we think correctly, that this doubt must be taken in favor of the United States, and against the State, and that the title did not become indefeasible until a section of road was built and certified. The other source of uncertainty in the act of July 14th, is to determine how far the grant made by the 4th section, whatever it may be, is qualified and restrained by the subsequent parts of the same act. This, also, we have attempted to define. Our conclusion is, that no title vested in the company to any of the lands because no road was completed and certified. This interpretation is sustained by the subsequent act of the Legislature. See act of March 17th, 1860, above set out.

This act recites the passage of the act of Congress of May 15, 1856, and of the General Assembly of July 14. And that the Iowa Central Air Line Railroad Company had wholly failed to perform the conditions of said acts; and had wholly failed to complete and equip any portion of the road, thereby at the option of said State, annulling all their rights to the lands and privileges, under and by virtue of said acts, by reason whereof the State of Iowa has the right to resume all said rights and privileges, and all the rights in relation to said lands as aforesaid conferred upon said company by said State. And also that no part of said lands has been actually conveyed by the State to said company, nor by said company disposed of pursuant to the provisions of said acts; and then enacts that all the lands, &c., conferred upon the company by the act of July 14th, 1856, are absolutely and entirely resumed by the State. It also repeals the fourth section of that act and all other acts and parts of acts inconsistent with the act then passed.

It will be observed that all the recitals in this act of March 17th are but declarations of the meaning and intention of the Legislature, by the enactment of July 14th, 1856, except as to the fact that no part of the road has been completed and equipped; and unless the recital that no part of the lands had been disposed of

pursuant to the acts, be also an exception. This last recital we understand to be rather a corrollary arising from the meaning of the act of July 14th, as declared by this act, than the statement of an independent fact. If, however, it be a fact within the province of the Court, rather than the Legislature, to determine, it arises directly and necessarily in this case. The other fact that no road had been completed and equipped, is admitted in this record to be true. See Agreed Statement, Record, p. 3.

We admit to the fullest extent, that if any absolute, indefeasible rights to the land in controversy were vested in the Air Line Company by the act of July 14th, 1856, an act of the Legislature could not divest them. This doctrine is established beyond controversy in Fletcher vs. Peck, 6 Cranch 87.

We also know that it is held that one department of the Government shall not exercise the functions belonging to another, and that the right to interpret the laws does and ought to belong exclusively to the Courts of Justice.

Dash v. Van Kleek, Shff. &c., 7, John. 477—508.

It is also a principle equally well settled that "Whenever it can be gathered from a subsequent statute, *in pari materia*, what meaning the Legislature attached to the words of a former statute, this will amount to a legislative declaration of its meaning, and govern the construction of the first statute." And that "all statutes *in pari materia* are to be read and and construed together, as if they formed parts of the same statute, and were enacted at the same time."

Smith's Com., section 613, citing Morris vs. Mellire, 6 Barn, & Cress. 454.
Potter's Dwarris, 145, 1 Kent 463, United States v. Callin, 3 Blatch. 325.

The act of July 14th cannot be held to have vested an indefeasible title in the company without resorting to a construction at least doubtful. This kind of construction, according to the cases

cited, is never to be adopted as against the State in this kind of a grant. In addition to this comes the act of the Legislature, declaring by the Legislature itself, that it never intended to vest any title whatever in the company, except upon the condition that the company should first build and equip a portion of the railroad, which it never did, as is conclusively agreed in this case. This we say disposes of the question of vested rights in the Air Line Company, and in the plaintiff.

It can make no difference that this last act of the Legislature was passed after the deeds had been made to the plaintiff. The act, for the purpose of which we are now speaking, only declares what the meaning of the law was from the beginning. This the plaintiff was obliged to know. Ignorance in this respect will no more avail him than it would if a Court were to declare the meaning of a statute contrary to his interpretation of it.

It can make no difference either if the act of July 14th be held to have vested a present interest in the Air Line Company, upon condition that it would afterwards complete and equip a portion of the road; and that the condition on which the title should fail was a condition subsequent. We say this is not the construction of the law, because the act itself speaks of the title becoming vested in the company in the future, which is in harmony with the spirit and purpose of the whole act; but if it were, it would not avail the plaintiff. If it be conceded that the company had some interest in the lands during the time between the passage of the act and the 1st of December, 1859, the time fixed by the act at which the State might resume for conditions broken, "such estate *ipso facto*, ceased on the breach of the condition, without entry." See Parmelee vs. the Oswego and Syracuse Railroad Company.

6 New York, 74, and cases cited.

In this case, however, there was an entry; for we suppose the act of March, 1860, was equivalent to that.

More, than this, the Iowa Central Air Line Company may be treated as sustaining the same relation to the State of Iowa relative to this grant that the State held towards the United States; which results in the act referred to operating as a declaration on the part of the State of a resumption of the grant, and of course on entry, and this brings this case within the decision rendered in Schulenburg *et al.*, v. Harrimon. 2 Dillon, 398.

The conditions do not depend upon particular words, but are to be gathered from the whole context.

See 2 Parsons' Conts., 38.
Taylor vs. Mason, 6 Wheat., 325.
Finlay vs. King's Lessees, 3 Pet., 374.

The act of January 28th, 1857, put in evidence by the defendant in error, found in the Revision of 1860 of the Laws of Iowa, at pages 221 and 222, in no way affects the positions here taken. That act gave the companies the right to execute mortgages and deeds of trust on the lands, and it is through the mortgage and deed of trust that the defendant in error claims title.

But the proviso in the second section of the act (Rev., Sec. 1336,) expressly declares that nothing in that act shall be so construed as in any manner to interfere with, change or modify the rights of the State or of the United States to any lands granted by Congress to the State and by the State to certain railroad companies therein—including the Iowa Central Air Line, of course.

IV.

Under the most liberal construction possible to be given to the act of May 15th, 1856, no title could be acquired for any lands, even if the first twenty miles of road had been built and certified, except those lying between the most easterly tract inuring to the

grant, and from thence west twenty continuous miles. Greater rights were not acquired when no road was built.

It was claimed in the State court by the defendant in error, that the act of Congress referred to, and the act of the General Assembly of the State of Iowa of July 14th, 1856, being silent in regard to what part of the line lands shall be selected for building any continuous twenty miles, and the only restriction being that each one hundred and twenty sections shall be within a continuous length of twenty miles of road, therefore it became optional with the company, to select the first one hundred and twenty sections within any continuous twenty miles along the line of the road.

We think that the most liberal construction which can be given to the act of Congress requires the company to select the lands for the first section of the road, beginning with the most easterly vacant tract in the grant and going west twenty continuous miles, and that a consideration of the whole act, taken in connection with the history and situation of the country at the time, will show that the intention of Congress could not have been more than this.

Statutes are to be construed from the entire language used, and in connection with the subject matter and purpose of the law.

19 Conn. 292.
2 Paine R, 584.
1 Kent Com., 162.

If the real meaning be doubtful, then every extrinsic fact and circumstance may be resorted to for the purpose of ascertaining the unexplained intention of the Legislature.

2 Cranch, 358.

Also to the history and situation of the country at the time the law was enacted.

1 Wheaton, 115.
3 Scam., 160.

Also the reason and spirit of the law.

6 Cranch, 307.
15 John., 350.
4 Comstock, 140.

When a statute is passed for the benefit of a railway, canal, or other company, it is regarded as a contract between a company of adventurers and the public, the terms of which are set forth in the act, and the rule of construction in all such cases is established to be, that any ambiguity in the law of the contract will operate against the adventurers, and in favor of the public, the former being entitled to claim nothing which is not clearly given by the act.

2 Barnwell and Adolphus, 793.
2 Scott, N. R., 226, 370, 228.
11 East., 685.
3 Scott, 803.
6 ib., 831.
1 Mylne & Keen, 195.
4 Meeson & W., 492.
Smith's Com., 650.
Broom, Max., 7.

These are well recognized rules of construction, and applied to this statute, with the facts and history of it, we think sustain our view.

At the time of the passage of this act, the Illinois Central Railroad was completed to Dunleith, the Dixon Air Line to Fulton, the Chicago & Rock Island to Rock Island, and the C., B. & Q. to a point opposite Burlington. Most of the settlements of the State were contained in a belt less than a hundred miles along the Mississippi, and not more than ten or twenty along the Missouri river. The great bulk of the country between these belts was unsettled and unentered public lands.

There was less than fifty miles of railroad in the State. The only outlet for its produce, and its only facilities for commerce, were the two rivers forming its east and west boundaries and the railroads terminating on the east bank of the Mississippi river.

It seemed to be generally claimed and conceded that the interior of the State could not be settled without railroads, and therefore few sales of public lands could be made.

The people of the State desired the grant of lands, to build connecting roads, to those above named, across the State, for the purpose of settling the State and improving its commerce, and Congress made the grant with the idea that the remaining lands, by doubling the price, would leave the public revenues substantially the same as if no grant had been made. It was known that comparatively few vacant lands remained within 50 to 100 miles of the Mississippi river. Such we think were the facts, and the reasons for making the grant.

There are some points regarding the intention of Congress that will not be disputed:

1. That the road should be commenced at the Mississippi river and be built west to the Missouri. The very language of the act declares this, and if it did not, the history and situation of the country at that time makes such intention just as certain as that—

"Westward the star of Empire takes its way."

2. That for every section of 20 miles of road built, not exceeding one hundred and twenty sections of land should be sold, which must be along some one continuous twenty miles of the road.

It will be noticed that the second clause of the fourth section of the act provides, that "when the Governor of said State shall certify to the Secretary of the Interior that *any* continuous twenty miles, &c., is completed," &c. This we think does not give the State or its grantee the right to build *any* twenty miles of its line first, at its option. The act contemplates the dividing the road into twenty mile sections for the purpose of determining when and what quantity of lands shall be had for each, and as the Governor, if the whole road should be built, would have certificates to make for each

twenty miles, the phrase "*any* continuous twenty miles" was used so that it might apply to each twenty mile section as it should be built. But the road, nevertheless, is clearly contemplated and provided to be built, beginning at the Mississippi and thence west as a continuous, unbroken line; and so the state and its grantees treated the question by commencing the construction of the road at said river.

And for the same reason and for another one soon to be stated, the lands are not expressly required to be taken from the continuous 20 miles along the completed portion of the road, if the construction which we are now presenting should be held to be the correct one.

Congress knew that along the Mississippi river, and for some distance westward, there were vacant public lands, and that for the first 20 miles of road, perhaps, but a small amount of lands could be had adjoining it. The lines of road were not yet fixed. Congress could not ascertain how far west of the river the land inuring to the grant would begin. After the lands should be withdrawn from sale, and the lines of the roads should be definitely fixed, then, and not till then, could it be determined where lay the most easterly tract within the limits of the grant. And until this was determined, Congress could not specify more definitely where the lands should be taken, than to say, that they should be taken within "a continuous 20 miles" along the road.

With the view we are now taking of the act, Congress intended, that if, as probable, but a small amount of lands should be found along the first 20 miles, then the State might go west till the first lands were reached, and from thence 20 miles west, take what lands should be found vacant, not exceeding one hundred and twenty sections. Congress also made provision, that in case of failure to build the road, no more lands should be sold than had been earned.

Any more liberal construction puts it in the power of the State or its grantee, to defeat the plain intention of Congress, and the leading motive it had in making the grant, and which is fully exemplified in the case at bar. It is provided that the lands not granted to aid in the construction of the road shall not be sold for less than $2.50 per acre. The government thus expected to derive a direct advantage from the building of the road, as an equivalent for the grant.

Suppose 20 miles of road had been built from the Mississippi river west, and the State, or its grantee, had then selected as in this case, 120 sections of land near the Missouri river, what possible advantage would the government have derived from the road to its remaining lands—the even sections corresponding with the odd sections taken—if no more road should be built?

We suppose it clear, that if none, or only 20 miles of road had been built, and all the remaining lands of the grant had reverted to the United States, the only lands that could have been sold for $2.50 per acre under the law, are the even sections corresponding with the odd sections selected by defendants' grantor.

And there is another fact which we think ought to have great weight in favor of taking the lands from east towards the west.—If grantor of the defendant in error had built its road, the most easterly lands would have first become marketable and would have been most desirable, and no company that intended to build a railroad would have thought of taking the lands in any other manner.

But grantor of the defendant in error, two years after it had abandoned work upon its road, and after the conditions imposed by the Legislature to build 75 miles by December, 1859, had been broken, selected 120 sections of these lands as near the Missouri river as the vacant lands would permit.

The real object of making this selection is plain enough. The

company had utterly failed to build any road. They probably supposed that the line would not be built at all. Many of the most eastern vacant lands were far from any means of communication, or outlet to any markets. Those selected were near a navigable river. Besides, if it had taken the most easterly vacant lands, 120 sections could not have been found in any continuous twenty miles.

To say that Congress contemplated any such result as we must to entitle the defendant in error to recover, seems absurd.

Cropping out all through the act of Congress granting these lands three things are noticeable: 1. The lands are to be used exclusively to build the roads. 2. They are to be used only as the work progresses. 3. The lands are to be selected within a space no greater than 20 miles for each 20 miles of road built.

It is true that the act does not, in terms, say where the State shall select the lands, for the first, or any 20 miles of road built, but the object and spirit of the grant, the fact that the road was to be built from east to west; that the lands selected for any 20 miles of the road built, should be within an equal space along the line; that the grant was expected to enhance the value of the lands along the completed portion of the road; that in the event of failure to build any part of the road, as to so much the lands would receive no benefit, and would revert to the government; all these things, taken in connection with the history and situation of the State, seem to us to leave no doubt that Congress could not have intended more than that the first 120 sections, (or such part thereof as should be contained in any continuous twenty miles), for the building of the first 20 miles of the road, should be taken from the most easterly lands inuring to the grant.

The defendant in error claims that Congress intended to leave it optional where the lands should be selected by the State, *only* for the reason that it did not expressly state where they should be taken.

Before such a construction should be adopted, it ought to appear clearly, from an examination of the whole act, taken in connection with all the extrinsic facts, that Congress did not indicate by implication where the lands were to be taken.

Besides, a corporation—a company of adventurers, in the most enlarged sense of the term, in this case—are entitled to nothing by virtue of this grant, except what is expressly given in it. It is entitled to nothing by implication, unless it be necessary implication, which will hardly be claimed in this case. Whatever is doubtful must be resolved against it.

Grants of land by act of Congress should be strictly construed *against* the grantees. Nothing passes but what is conveyed in clear and explicit language.

Dubuque & P. R. R. Co. v. Litchfield, 23 How., pages 88 and 89, citing I East., 675, which uses this language: "If the words would fairly admit of different meanings, it would be right to adopt that which is most favorable to the interest of the public, and against that of the company, because the company, in bargaining with the public, ought to take care to express distinctly what payments they are to receive, and because the public ought not to be charged unless it be clear that it was so intended."

"The reason of the rule is obvious, parties seeking grants for private purposes usually draw the bills making them. If they do not make the language sufficiently explicit and clear to pass every thing that is intended to be passed, it is their own fault; while on the other hand such a construction has a tendency to prevent parties from inserting ambiguous language for the purpose of taking, by ingenious interpretation and insinuation, that which cannot be obtained by plain and express terms."

The rights claimed by the defendant in error in this case are derived entirely from the act of Congress, and stand on the same footing of a grant by the public to a private company.

There is nothing expressed that would give the grantor of the defendant in error, the right to select 120 sections, even if the first twenty miles of road had been built, on the extreme western limit of the grant. But on the contrary, it is clear that Congress intended the lands to have been taken from east to west, as the work progressed on the road in the same direction.

V.

The Iowa Central Air Line Railroad Company not having completed any road at all by the time at which the act of the General Assembly of July 14th, 1856, required it to have at least seventy-five miles built, the State had the right to rescind the contract for conditions broken, which it did by the act of March 17th, 1860.

We have already referred to the 8th section of the act of July 14th, 1856. The defendant in error claims that under this section the General Assembly had no right to resume the grant before December 1st, 1865; for the reason that the conditions mentioned in that section are connected by copulative conjunction. The copulative form is used, it is true, but we think that the conclusion drawn does not follow. "In the construction of a statute a conjunctive clause may be taken in the disjunctive when it is obvious that such was the intention of the Legislature."

Barker v. Estey *et al.*, 19 Vt. 131.

We think it obvious that each of the conditions named in the section is independent of the others, and was intended as a cause for rescinding the contract. It cannot be presumed that the Leg-

islature meant to suspend all control over the land and the railroad for more than nine years. Such intention cannot be presumed; it is certainly not so declared. The act of March 17th, 1860, gives the Legislative interpretation of this.

In the second section of the act of March 26th, 1860 (Laws of Iowa, 1860, p. 40), the conditions of that grant are stated in precisely the same form. In the fifth section of the same act the Legislature construes section two by this language: "Nor shall this act be so construed as in any manner to prevent the General Assembly of this State from resuming, upon failure of either of the conditions named in the second section of this act, all lands to which the said company shall not have then become entitled by completion of one or more sections aforesaid of the said road." This is the Legislature's interpretation of its own language, and we think it impossible to say that it is not reasonable and natural. We will also state here, what we omitted in the proper place, that this fifth section sustains the construction for which we contend under the II and III heads of this brief. That part of the section to which we refer is in these words: "It is further expressly provided that this act shall not be so construed as to give title to any portion of said lands to the company accepting the provisions hereof, otherwise than as the work progresses, and as provided in the act of Congress aforesaid, conferring the lands upon the State of Iowa, namely: When they shall have completed each section of twenty miles of road aforesaid, they shall be entitled to the amount of land apportioned thereto and not before; and they shall not become entitled to the first one hundred and twenty sections authorized by act of Congress, until such first section of their road shall have been completed, at which time they shall become entitled to the first apportionment of land."

This language, we think, must have great weight, under the rules already stated of construing statutes *in pari materia* by each other, not to divest the title of the Iowa Central Air Line Railroad Company or the defendant in error, but to show that they never acquired any title whatever to the land.

VI.

The defendant in error was not and could not be a purchaser without notice of the infirmity of the title of the Iowa Central Air Line Railroad Company, because that title depended on an act of Congress, and an act of the General Assembly, of which he was bound to take notice.

It was claimed by the defendant in error in the State court that he took the lands from his grantor for a valuable consideration paid to the Iowa Central Air Line Railroad Company, and that his deeds, until affirmatively impeached, constitute a good *prima facia* title. It is difficult, for us at least, to understand just what is meant by this. We suppose it is not intended to be argued that payment of a valuable consideration by the defendant to said Railroad Company, invested the said company with a title, or could in any manner change the construction of the act of Congress or of the act of the General Assembly under which the Railroad Company pretended to claim title; nor that the payment of value would enable the Railroad Company to convey a title which it did not have. What, in this case is meant by a *prima facia* title is also difficult to understand. This is an action for the recovery of real property under the laws of the State of Iowa. It is a statutary action, and not a technical action of ejectment. But the defendant in error must recover upon the strength of his own title.

Revision Laws of Iowa, Sec. 3591.

To do this requires more than a *prima facia* title, and demands

the defendant in error to trace his title back to the original source. This brings him back to the act of Congress and the act of the General Assembly of Iowa, and requires a construction of those acts. He, of course, when he bought, was obliged to take notice of the source of the title, being public laws. Or if they are called private acts, his obligation to know their force and effect is the same, they being brought to his notice as links in his chain of title. In one word, this case is to be decided, so far as the statute is concerned, without any reference whatever to the good or bad faith of the defendant in error or his purchase from the said Railroad Company or the consideration he paid. No issue is made upon these facts.

VII.

The *proviso* in the act of Congress of June 2d, 1864, which is claimed to ratify and confirm the title of the defendant in error, had not that effect. It is not a condition attached to the grant made by that act to the Cedar Rapids and Missouri River Railroad Company, one of the plaintiffs in error. It is simply a declaration by Congress of its intention not to interfere with vested rights if there were such, and leaves that fact to be determined by the courts, as all legislative acts must.

The *proviso* is contained in the 4th section of the act referred to, and is in these words: "That nothing in this act shall be construed to interfere with, or in any manner impair, any rights acquired by any railroad company; nor shall it be construed to impair any vested right of property, but such rights are hereby reserved and confirmed."

The proviso it will be seen, is not confined to the parties and subject matter embraced in the 4th section, but expressly refers to the entire act—the language being "that nothing in this *act* shall be construed to interfere," &c. So far as the rights of the defendant in error are concerned, the act gives them no stronger support with the proviso than it would without it. If he had any vested rights, that act could not deprive him of them; and it certainly does not cure any defects in his pretended title, nor estop the plaintiff in error from questioning it. It is conceded that if Congress granted to the Cedar Rapids and Missouri River Railroad Company, the further lands embraced in said act, upon condition that the pretended title of the Iowa Central Air Line Railroad Company and its grantee should not be questioned, and the grant was accepted in that form, then, whether the latter company had any title or not, plaintiffs in error are estopped from questioning it. But this is precisely what we deny that Congress intended to do or did do.

At the time of the passage of the act of 1864 the *status* of the parties, and the land grant, were as follows: The Iowa Central Air Line Railroad Company had wholly failed to build any part of its road as required by the act of the Legislature transferring them the grant, and after such failure it had conveyed 120 sections of the grant to divers persons—defendant in error among the number. The legislature, on the 17th of March, 1860, had wholly resumed the *entire grant*, including the 120 sections conveyed as aforesaid. On the 26th of March, 1860, the legislature had given the whole grant, *including* the 120 sections in dispute, to the C. R. & M. R. R. Co., one of the plaintiffs in error, upon conditions therein named.

The last named company had made good progress with its work, and had then completed about 100 miles of road, and was pushing the work vigorously. Congress had made a grant of land in 1862 to aid in the construction of a railroad from the western boundary of Iowa at Omaha, to the Pacific. It was desirable to push a road

across Iowa to aid in the furnishing material for such road. The C. R. & M. R. Co., was far ahead of any other of the four land grant roads in Iowa pushing westward, and hence, Congress was asked to allow it to modify its line so as to make a connection with the Union Pacific Railroad, and also, in the language of the 4th section of the act, "for the purpose of facilitating the more immediate construction of a line of railroad across the State of Iowa, to connect with the Iowa branch of the Union Pacific Railroad," further lands were asked to be granted by Congress.

At this juncture the defendant in error in this case and his counsel put in an appearance at Washington, according to the argument of the counsel in the State court, and objected to the passage of the bill unless such rights as he might have should be reserved to him.

And right here we insist on an objection to the testimony of Mr. Allison and Mr. Eaton, as to what took place and what was talked of between Crocker, and defendant in error and his counsel, and Congressmen, because it can possibly have no weight in determining the intention of Congress. That must be gathered from the language of the act itself, taken in connection with such public and notorious facts of history, and the situation of the country, of which the courts will take judicial notice. The honey-fugling of interested parties, to serve private ends, with Congressmen, is not one of the recognized avenues leading to the intention of legislatures.

In the case of Aldridge v. Williams, 3, Howard, 1, this court held that: "The court cannot, in any degree, be influenced by the construction placed upon it [a statute] by individual members of Congress in the debate which took place on its passage, nor by the motives or reasons assigned by them for supporting or approving amendments that were offered. The law, as it passed, is the will of the majority of both houses, and the only mode in which that will is spoken is the act itself; and we must gather their intention from the language there used, and looking, if necessary, to the public history of the times in which it was passed."

Much less are the conversations between private parties and Congressmen, not in the presence of either house, admissible.

If the statute be regarded as a private contract, the familiar rule that the written contract is presumed to contain all that was agreed to, shuts out previous conversations.

That it is competent to show by proof aliundi, to what particular subject an act of a legislature applies, when it is left in doubt by the act itself, is not denied. But no such proof is necessary in this case, because the parties are agreed that the proviso quoted, as contained in the 4th section of the act of June 2, 1864, does among other things point directly at the lands and rights claimed by the defendant in error; and therefore all explanatory testimony ought to be excluded altogether.

In the first part of section 4 of the act under consideration, and immediately following the provision to change and modify the line of road, and to build a connecting branch, this language occurs: "And the said Cedar Rapids and Missouri River Railroad Company shall be entitled for such modified line to the same lands and to the same amount of lands per mile, and for such connecting branch the same amount of lands per mile, as originally granted to aid in the construction of its main line, subject to the conditions and forfeitures mentioned in the original grant."

Here was a grant of the "same lands" originally granted to the State, and re-granted to the C. R. & M. R. Company. If the act had stood in this way, without the proviso, it might be claimed to have furnished a legislative construction, to the effect that the Iowa Central Air Line Company was entitled to the 120 sections, a part of which is here in controversy. To avoid this and to leave the question an open one to be decided by the courts, this proviso was inserted. The very fact that the proviso did not "reserve and confirm the 120 sections claimed by defendants in error and others, in terms, was because there was a controversy about them:—the Iowa Central Company and grantees affirming that they were en-

titled to the lands and the C. R. & M. R. Company steadily denying any such right.

If there had been an agreement arrived at, such as the defendant in error claimed in the State Court, the proviso would have, in clear and explicit terms, confirmed the title in the Iowa Central Company and its grantees to the *very lands they had already selected and conveyed.* This would have been most easy and natural. But instead, the proviso uses this guarded language: "That nothing in this act shall be construed to *interfere* with, or in any manner *impair* any rights *acquired* by *any* railroad company named in the act to which this is an amendment, or the rights of *any* corporation, person or persons, acquired through any such company; nor shall it be construed to impair any vested right of property, but such rights are hereby reserved and confirmed."

Suppose, now, it be the true construction of the act of Congress and the Legislature, as claimed by us under the third branch of this argument, that defendant in error had no title whatever, at the time of the passage of the act of June 2d, 1864, can it be seriously claimed that this proviso, which agrees not to *interfere* with any *acquired* rights, actually *creates* rights? It seems to us clearly not. This is a proviso not to *interfere with vested rights*, and not a proviso to *create* rights, or to *confirm* doubtful rights.

And another, and a conclusive consideration, as it seems to us, is that this proviso is not confined to the rights of the Iowa Central Air Line Railroad Company and its grantees. After providing that none of their rights are to be interfered with comes this general clause, which has no reference to that company or to the defendant in error: "Nor shall it be construed to impair any vested right of property, but such rights are hereby reserved and confirmed." Whose vested rights of property is not to be impaired? Clearly, as between the parties to this record, the rights of the plaintiffs in error, because there is no pretense that any persons or corporations, other than the Iowa Central Air Line Company and its grantees, and the C. R. & M. R. R. R. Co. and its grantees, had any rights

at all in the grant herein involved. Hence, the rights of the plaintiffs in error are just as clearly reserved by this proviso as those of the Iowa Central Air Line Company. The effect of this proviso is, that the act shall not *interfere*, that is, shall leave the dispute in *statu quo*, and nothing more.

No amount of stuffing this proviso with congressional conversations can take away from it this plain and unequivocal meaning.

Both these railroad companies were claiming these lands under acts of the Legislature of Iowa, and neither of them had any claims directly, under any act of Congress. Congress had up to this time dealt exclusively with the State in regard to the lands of these grants. It was not competent for Congress to settle, by its legislation, any disputed rights under the State laws, between these companies, and it had no reason to compel the present plaintffs in error to give up any rights they may have had in this one hundred and twenty sections of land, if it had the power to do so. If it had made the grant of the further lands given by the act of 1864, upon the express condition that the plaintiffs in error should release and confirm to the Iowa Central Air Line Company and its grantees these sections, then an acceptunce of the grant would have estopped the plaintiff in error from questioning the title of the defendant in error.

But this proviso will bear no such construction.

It amounts only to a disclaimer by Congress of any intention to *interfere* in the matter of dispute, and leaves the question an open one to be settled by the courts. Had there been any misunderstanding in regard to the construction of an act of Congress under which these parties were each claiming rights, there would have been propriety in a declaration by Congress of the true meaning of the same.

A previously existing right will not be construed away by implication.

Brevard, 296.

Nor the destruction of a previously acquired right.

6 John. 104; 7 *ib.* 503.

This proviso is a saving clause, and must relate to a thing *in esse*. The nature of a saving clause is to preserve a former right, and not to create a new one.

Smith's Com., 711.

A proviso is to be construed strictly.

United States v. Dickson, 15 Pet. 165.

VIII.

"Every legislative act must have a reasonable construction."

Potter's Dwarris, p. 145.

A construction which opens the door to fraud is not a reasonable one. The construction given to the act of May 15th, 1856, by the Supreme Court of Iowa is of this character. The effect of that construction is this:

"The act of May 15th, 1856, granted to the State of Iowa an indefeasible title to one hundred and twenty sections of land for the purpose of aiding it to construct a certain railroad. The State could and did transfer the title to said land to the Iowa Central Air Line Railroad Company for the purpose of securing the construction of a section of twenty miles of said railroad. The company did not construct a mile of said railroad, but failed in every part of its agreement. Still the land belongs to it or to the defendant in error, its grantee."

Such a construction is promotive of a fraud upon a fund granted by the United States for the purpose of effecting a great public end. It diverts the fund from its public office to private gain and corporate rapacity.

The second proviso to the first section of the said act reads as follows:

"*Provided, further*, That the lands hereby granted for and on account of said roads severally shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, *and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever.*"

The Iowa Central Air Line Railroad Company did not construct a mile of the road which it undertook to build; but it did become indebted to the defendant in error. It appropriated the lands in controversy to the payment of that debt. This was in no sense a compliance with the terms and conditions of the grant, and yet it is what the judgment of the Supreme Court of Iowa approved by the construction which it gave to the said act.

By said construction the Iowa Central Air Line Railroad Company, which did not construct a mile of the railroad referred to, [illegible] ed, free from all limitations and conditions [illegible] hundred and twenty sections [illegible] in error who constructe[illegible] road opposite to wh[illegible] an acre of it. T[illegible] is allowed to [illegible] States fo[illegible] its re[illegible] ty[illegible]

tions of land in advance of the completion of any part of its railroad, and that the lands mentioned in the record were rightfully selected and sold by said railroad company, under the powers of the said act of Congress of May 15th, 1856."

Record, p. 30.

Reduced to its logical results the proposition is this: "The act of May 15th, 1856, authorized the State of Iowa to give to whomsoever it might deem proper, one hundred and twenty sections of land granted by that act for a specific public purpose, and that the title to the land so disposed of became absolute in the State's grantee by the terms of said act and of the act of the General Assembly of the State of Iowa, notwithstanding the grantee of the State should fail to perform a single condition attached to the grant, or to do any act towards effecting the purpose which Congress had in view when it passed the act which we are now considering."

[redacted]h a construction is not a reasonable one. But it is the one [redacted]d supports the pretended title of the defend- [redacted]uction of the act of May 15th, [redacted] lands in dispute. His [redacted]l that cannot be sup- [redacted]ther ground than [redacted]s to make an [redacted]tor. That [redacted]he ap-